

STD 97/2 - Classification of hand-held breast pump kits

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This Document is a Ruling for the purposes of section 77 of the *Sales Tax Assessment Act 1992* and may be relied upon by any person to whom it applies.

Sales Tax Determination

Title: **Classification of hand-held breast pump kits**

Background

The Australian Taxation Office (ATO) has received requests regarding the classification of hand-held breast pump kits.

There are several kinds of breast pumps on the market, ranging from motorised free standing ones to hand-held kits. Motorised breast pumps are ordinarily used by hospitals or medical practitioners and are exempt from sales tax. Hand-held breast pumps are used mainly in the home and have been ruled to be taxable in the past.

As a result of changes to the sales tax law, effective from 1 January 1993, the ATO has reviewed the classification of hand-held breast pump kits.

This determination sets out the ATO view on the classification of these goods and gives advice on credit claims.

Issue

What is the sales tax classification of hand-held breast pump kits?

Decision

Hand-held breast pump kits are medical goods of a kind ordinarily used by persons suffering from a medical condition to alleviate or treat the condition or its effects. They are exempt under Item 80 of Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* (E&C Act).

Motorised breast pumps continue to be exempt under Item 81 as surgical instruments and appliances ordinarily used by hospitals or medical practitioners.

Where sales tax has been paid on hand-held breast pump kits, it will have been overpaid within the meaning of the credit provisions in the sales tax law.

Date of effect

This Determination is effective immediately. It replaces any previous private or public rulings to the extent that they are inconsistent with it. If you have overpaid tax on previous dealings with these goods since 1 January 1993, you may have an entitlement to a refund of that tax provided you have not passed the tax on to your customers, or, if you have passed it on, you have subsequently refunded it.

Reasons

We have based our decision on the following legislative provisions:

Item 80 & Item 81 in Schedule 1 to the Sales Tax (Exemptions and Classifications) Act 1992

Subitem 80(1) of Schedule 1 to the E&C Act exempts from sales tax:

'Medical or surgical goods of a kind ordinarily used by persons suffering from a medical condition where that use is for the purpose of alleviating or treating the condition or its effects'.

The term *Medical condition* is defined in subitem 80(2) of Schedule 1 to mean: *'sickness, disease, injury or physical impairment'*.

Under the previous sales tax law, medical and surgical goods exempted by the equivalent Item in Schedule 1 had to be of a kind used *exclusively or principally* to treat or alleviate sickness, disease, etc. Whilst hand-held breast pump kits were found to be used some of the time for those purposes, their principal use was to assist with lactation. Consequently, the breast pump kits were ruled to be taxable.

The law was amended with effect from 1 January 1993 to make the requirements of the exemption Item less restrictive. Item 80 exempts medical and surgical goods *of a kind ordinarily used* by people to treat or alleviate a medical condition, or its effects.

The phrase *of a kind ordinarily used* envisages a settled or common use of a class of goods rather than of an individual product. The exemption applies even if the breast pumps are used in more than one way. The important question is not whether they are used to treat or alleviate a medical condition, but whether they belong to a class of goods that is ordinarily used for that purpose.

and case law:

Hygienic Lily Ltd v. DFC of T 87 ATC 4327; (1987) 18 ATR 619

In *Hygienic Lily Ltd v. DFC of T* the Federal Court was required to consider whether paper cups were goods of a kind ordinarily used for household purposes. Gummow J found that goods are *of a kind ordinarily used* for a purpose if they are to be recognised as members of a class or genus which *commonly or regularly* is used for that purpose.

Breast pumps are mainly used for purposes that could not be described as being to alleviate or treat a medical condition or its effects. For example, they are used to increase lactation, collect milk for sick or premature infants, to facilitate the collection of breast milk for feeding at another time, or where a mother has flat or inverted nipples.

However, breast pumps are also commonly or regularly (i.e., ordinarily) used in alleviating the effects of the following medical conditions associated with breast feeding which constitute sickness or physical impairment for the purposes of Item 80:

- engorged breasts;
- sore or cracked nipples; and
- mastitis.

Consequently, hand-held breast pump kits are exempt from sales tax under Item 80.

Communication of the Decision

This determination has been made available for publication by the sales tax publishing houses and will be provided to interested persons upon request.

Commissioner of Taxation
4 June 1997

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Not previously released in draft form

Related Determinations:

Related Rulings:

Subject Ref: breast pump kits; sales tax classification

Legislative Ref: Sales Tax (Exemptions and Classifications) Act 1992, Items 80 and 81 of Schedule 1

Case Ref: Hygienic Lily Ltd v. DFC of T 87 ATC 4327; (1987) 18 ATR 619

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