

ST 2078 - SALES TAX : SUNSCREEN PREPARATIONS : COSMETICS



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TAXATION RULING NO. ST 2078

SALES TAX : SUNSCREEN PREPARATIONS : COSMETICS

F.O.I. EMBARGO: May be released

REF H.O. REF: ST 11/270 P13 F128 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO: SUBJECT REFS: LEGISLAT. REFS:

I 1078654	SUNSCREEN PREPARATIONS COSMETICS	SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT ITEM 38A FIRST SCHEDULE
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OTHER RULINGS ON TOPIC ST 2041, 2048

PREAMBLE Item 38A in the First Schedule to the Sales Tax (Exemptions and Classifications) Act, exempts the following sunscreen preparations from sales tax :-

Preparations -

- (a) that are put up and sold for use as substances to be applied to the skin for the purpose of screening out solar ultra-violet rays, but not including -
 - (i) goods of the following kinds, namely, face creams, face oils, face lotions, body creams, body oils, body lotions, rouge, lip-sticks, eye-brow pencils and eye shadows, being goods that are cosmetics, cosmetic preparations or goods in the nature of cosmetic preparations; or
 - (ii) other goods that are cosmetics, cosmetic preparations or goods in the nature of cosmetic preparations; and
- (b) in respect of which there is in force a certificate given for the purposes of this item by the Director-General of Health, or by an officer appointed by him for the purpose, that certifies that the preparations are preparations that provide an acceptable level of protection from solar ultra-violet rays.

2. The purpose of this Taxation Ruling is to provide guidance as to the types of preparations which the Commissioner of Taxation regards as "cosmetics", "cosmetic preparations" or "goods in the nature of cosmetic preparations" and which are excluded from the scope of the exemption item. In addition, attached to this Taxation Ruling are lists of preparations which are exempt from sales tax under item 38A, First Schedule (Attachment A) and of preparations which are excluded from the exemption item and subject to tax.

3. Before discussing the scope of the excluding provisions of sub-paragraphs (a)(i) and (a)(ii) to item 38A, however, it is important to stress that, for a preparation to be accepted as one put up and sold for use as a substance to be applied to the skin for the purposes of screening out solar ultra-violet rays, it is essential that its label and inner and outer containers in which the preparation is marketed and other promotion literature, brochures etc. with which it is sold or advertised for sale appropriately describe the preparation as a substance to be applied to the skin to screen out solar ultra-violet rays.

RULING 4. Whether a particular preparation to be applied to the skin is a "cosmetic", "a cosmetic preparation" or is "in the nature of a cosmetic preparation" is considered to be a question of fact or a question of impression and fact (cf. Downland Publications Ltd v Deputy Federal Commissioner of Taxation 83 ATC 4173 esp. Gibbs C.J. at p. 4139) to be gained from all of the circumstances in which the preparation is marketed.

5. In determining this question it is not sufficient in itself for a preparation to qualify for exemption for it merely to be labelled with claims that the preparation screens out solar ultra-violet rays. All of the circumstances in which the preparation is marketed need to be considered including the form of the preparation, its ingredients, the manner in which it is promoted for sale and its suggested intended use.

6. In the absence of a definition of the term "cosmetic" in the sales tax law the word is considered to have its everyday meaning. In this regard the Collins English Dictionary defines the word "cosmetic" as :-

(i) Any preparation applied to the body especially the face with the intention of beautifying it;

(ii) Serving or designed to beautify or improve the body especially the face; and

(iii) Having no other function than to beautify

7. The Shorter Oxford English Dictionary defines the word "cosmetic" as follows :-

(a) Having power to beautify (especially the complexion);

(b) (i) a preparation for beautifying the hair; skin or complexion; and

(ii) the art of adorning or beautifying the body.

8. Having regard to all of the circumstances in which particular preparations are marketed and to the ordinary meaning of the word "cosmetic", those preparations which are marketed to beautify the skin or complexion are regarded as cosmetics, cosmetic preparations or goods in the nature of cosmetic preparations for the purposes of excluding paragraph 38A(a)(i) or (ii), First Schedule.

9. Where a preparation is labelled or otherwise advertised or promoted as a beauty preparation or, for example, makes

claims about beautifying the skin or assisting it to remain or become fresh, soft, smooth and free of creases or wrinkles, this would indicate that the preparation is a cosmetic, cosmetic preparation or is in the nature of a cosmetic preparation.

10. On the other hand, where a preparation is labelled or otherwise advertised or promoted as a sunscreen preparation and its formulation is consistent with it being a sunscreen preparation, the fact that it may claim to moisturise the skin or to promote tanning of the skin (without any beautifying claims) would not, of itself, preclude it from exemption. Such claims are not, of themselves, regarded as being inconsistent with the preparation being put up and sold for use as a sun-screening substance for the skin.

COMMISSIONER OF TAXATION
23 May 1984

APPENDIX

ATTACHMENT A

PREPARATIONS EXEMPT UNDER
ITEM 38A IN THE FIRST SCHEDULE
TO THE SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT

AEROSOL

Ambre Solaire	Mousse
Janus	Rumba Suntan Spray
Mary Quant	Sunshine Oil
Piz Buin	Exclusive Creme Spray
Uvosan	Ultra Violet Filter Spray
Velvalene	On Guard

ALCOHOL SOLUTION

Avon	Bronz Glory Sun Block Factor 8
DHA	Barbados "Sol Coat" Dark Tanner
DHA	Barbados "Sol Coat" Protective Blockout
Estee Lauder	Invisible Sun Control 8
Hamilton	Sunscreen Broad Spectrum
ICI	Alcoholic Clear Lotion
Owen	UV Sunfilter Clear Lotion
Piz Buin	Pabafilm
Piz Buin	Broad Spectrum UV Lotion 8
Piz Buin	Exclusive Lotion 4
Robins	Extreme Lotion 6
Sea and Ski	Phiasol
Sea and Ski	Blockout Clear Lotion
Skol	Blockout Broad Spectrum Skin
Theta	Protector Clear Lotion
Tondaw International	Blockade
Uvosan	Burn Free
	Presun
	UV Filter Lotion

CREAM

Ambre Solaire	Suntan Cream 9
Ambre Solaire	Swim and Sun Cream (all)
Aquasun	Sun Blockout Cream

Aquasun	Broad Spectrum Sun Blockout
Aramis	Solar Shield Cream
Avon	Bronze Glory Sun Safe
Bayer	Delial Sun Cream
Biodraga	Bio Soleil Sun Cream
Bioglan	Sunblock
Biokosma	Tibetan Sun Cream
Bonne Bell	Sun Bloc
Bonne Bell	Sure Tan
Clinique	Sun Block 8
Cyclax	Ultra Tan Sun-Proof Cream
David Craig and Co.	Craigston Ultra Violet Sun Screen
Deltoid	Uvicone Cream
Elizabeth Arden	Suncare Gentle Tanning Cream
Elizabeth Arden	Suncare Sun Blocking Cream
Elizabeth Arden	Suncare Sun Shading Cream
Elizabeth Arden	Suncare Sun Tanning Cream
Ella Bache	Creme de Jour Taches de Rousseur
Ella Bache	Sun Base (all shades)
Estee Lauder	Sun Block Creme 23
Estee Lauder	Ultra-violet Screening Creme 10
Eversun	Facesaver Broad Spectrum Sun
Eversun	Blockout
Eversun	Sun Blockout Creme
Gilseal (Gilda)	Broad Spectrum Sun Blockout
Hamilton	Super Screen
	Sunscreen Broad Spectrum UV
Harriet Hubbard Ayer	Filter Cream
Harriet Hubbard Ayer	Altitude Cream
Healthy Life	Special Sun Cream 6
Heather	Sun Protector Cream
Helena Rubinstein	UV Filter Cream
	Golden Beauty Pre-Melanin Suntan
ICI	Accelerating Breast Cream - High
ICI	Protection 6
ICI	UV Sunblock Cream
ICI	UV Sunfilter Cream
ICI	UV Suntan Cream
Juvena	UV Ultrablock Cream
Juvena	Sun Cream Bronze
Juvena	Sun Cream 3
Mary Kay	Sun Protection Cream
Orlane	Sunscreen
Piz Buin	Emulsion Solaire
Piz Buin	Broad Spectrum UV Creme 8
Piz Buin	Exclusive Creme 4
Piz Buin	Extreme Creme 6
Piz Buin	Extreme Creme for Children 6
Skol	Moisturising Suntan Creme
Souls	Sun Block UV Sun Filter
Stanholme	Sun Chum Sun Block
Stendhal	Varese Creme Experimentee
	Protective Tanning Cream
Stendhal	Varese Total Protection Cream
Sterling Pharmaceuticals	Nyal Bronzinc
Sydney Girl	High Protection Sunscreen
United Laboratories	UV Supreme Sunscreen
United Laboratories	Capricorn Sunscreen
Uvistat	Sunscreen
Uvosan	Sun Block
Uvosan	UV Ultra Violet Filter Cream

GEL

Braggi	Sun Bronzing Gel
Elizabeth Arden	Suncare Dark Tanning Gel
Hawaiian Tropic	Aloe Paba Pre Tan
Hawaiian Tropic	Sun's Screen Protective Gel
Juvena	Sun Gel
Natra	Sunfilter Gel
Owen	Paba Gel
Sigma	Tan'n'ban Gel

LIP, NOSE AND FACE PRODUCTS

Apex	Tan Zinc
Apex	White Zinc
Avon	Care Deeply Lip Balm
Biodroga	Bio Soleil Sun Block Stick
Bonne Bell	Weatherproof
Bonne Bell	High Altitude Extreme Weather Cream
Braggi	Sun Block Stick
Charles of the Ritz	Ritz Bronze Extra Protective Cream for the Face
Charles of the Ritz	Sun Protective Stick
Coppertone	For Faces Only (All)
Coppertone	Shade Lipscreen
Coppertone	Shade Noskote Clear
Dalcross	Uvistick
Eversun	Sunstick
Faulding	Zinc Pink
Faulding	Zinc White
Hamilton	Solastick
ICI	UV Sunblock Stick
Kingsgrove	Key Sun Pinke Lip
Kingsgrove	Key Sun Pinke Zinc
Kingsgrove	Key Sun White Zinc
Kingsgrove	Key Sun Tanne Zinc
Mentholatum	Lipbalm (4 colours)
Nyal	Bronzinc
Nyal	Zinc Cream
Robins	Beach Paint (All Shades)
Robins	Chapstick
Rosken	Solar Block Sunstick
Sea and Ski	Blockout for Lips and Noses
Sigma	Zinc Cream - White
	- Tan
	- Pink
Ultima II	Scientific Sun-Block Stick
Uvistat	Sunscreen for Lips
Vanda	Vadatan Shadow

MILK (CREAMY LOTION)

Ambre Solaire	Moisturising Sun Tan Lotion 5
Ambre Solaire	Moisturising Sun Tan Milk 4
Ambre Solaire	Moisturising Sun Tan Milk 6
Ambre Solaire	Swim and Sun Milk (All)
Aquasun	Blockout Lotion
Aquasun	Fair Skin Lotion
Aquasun	Normal Skin Lotion

Aquasun	Tanned Skin Lotion
Avon	Bronze Glory Tanning Lotion
Avon	Sunseekers Tanning Lotion
Avon	Sunseekers Sunsafe Lotion
Avon	Sunseekers Ultra Sunsafe Lotion
Bayer	Delial Sunmilk
Biodraga	Bio Soleil Sun Fluid 3.5
Biodraga	Bio Soleil Sun Fluid 5.0
Biodraga	Bio Soleil Sun Quick Bronze
Biokosma	Tibetan Sun Milk
Campus	Sunsect Lotion
Coles	Sunscreen Lotion by Starlet (SPF3, 6 and 9)
Con-stan	Nutri-Tan Sun-Block Lotion
Con-stan	Nutri-Tan Sun Tan Lotion
Coppertone	Eclipse Lotion
Coppertone	Gradual Tanning Lotion 6
Coppertone	8 High Protection Shade Plus
Coppertone	Shade 6
Coppertone	Super Shade 15
Coppertone	Swim Tax (All)
DHA	Barbados "Sol Coat" Dark Tanning Lotion
DHA	Barbados "Sol Coat" Protective Blockout Lotion
Eversun	Fair Skin Lotion
Eversun	Normal Skin Lotion
Eversun	Tanned Skin Lotion
Figuretone	99 Herbal Suntan Lotion
Gilseal	Family Screen
Hawaii Tan Maker	Golden Tanning Lotion with Paba Sunscreen
Hawaii Tan Maker	Paba Lotion
Healthy Life	Aloe Vera Sun Block Lotion
Heather	Surf-Ski Sun Lotion
Helena Rubinstein	Golden Beauty Pre-Melanin Suntan Accelerating Lotion - Moderate Protection 4
Helena Rubinstein	Golden Beauty Pre-Melanin Suntan Accelerating Lotion - High Protection 6
Helena Rubinstein	Golden Beauty Pre-Melanin Total Sun Block - Maximum Protection 10
Helena Rubinstein	Golden Beauty Suntan Acceleration Lotion
Helena Rubinstein	Golden Beauty Moderate Protection - Tinted
ICI	Reef Lotion (all scents)
ICI	UV Sun Block Milk
ICI	UV Sunfilter Milk
ICI	UV Suntan Milk
ICI	UV Ultrablock Milk
Johnson and Johnson	Sundown (All)
Johnson and Johnson	Sundown Ultimate Protection Broad Spectrum
Johnson and Johnson	Sundown Creamy Lotion
Johnson and Johnson	Sundown Sunblock 15
Juvena	Sun Fluid Bronze
Juvena	Sun Protection Fluid
Mary Kay	Body Care Sunscreening Lotion SPF 10

Mary Kay	Facial/Under Makeup Sunscreen
Multi-shield	SPF 12
Natra	Sun and Insect Shield
Nivea	Sunfilter Lotion
Nivea	Sunscreen Filter
Orlane	Suntan Lotion
Orlane	Lait A Bronzer (Sun Milk)
Owen	Lait Solaire
Owen	Pabafilm 10
Peben	Pabafilm 15
	Hawaiian Tropic Dark Tanning
	Lotion
Pistache	UV Essence
Pistache	UV Filter Lotion
Piz Buin	Double Tax Milk
Piz Buin	Exclusive Milk 4
Piz Buin	Extreme Milk 6
Piz Buin	Milk for Children 6
Rawleigh	Sunscreen
Rosken	Solar Block Lotion
Royal Hawaiian	Deep Tanning Lotion 4
Royal Hawaiian	Deep Tanning Lotion 10
Royal Hawaiian	Ultra Sunscreen Lotion
Sea and Ski	Aloe Vera Tanning Lotion
Sea and Ski	Baby Lotion Formula with
	Sunscreen
Sea and Ski	Blockout Broad Spectrum Skin
	Protector Creamy Lotion
Sea and Ski	Blockout Cream
Sea and Ski	Blockout Liquid
Sea and Ski	Golden Tan
Sea and Ski	Indoor Outdoor
Sea and Ski	Hawaiian Tanning Formula Dark
	Tanning Lotion
Sea and Ski	Suntan Lotion (for Fair Skin)
Sea and Ski	Super Blockout
Sea and Ski	Surf and Tan
Sea and Ski	Tanfantastic
Sea and Ski	Water Resistant Formula Tanning
	Lotion
Skol	Anti-burn Coconut Oil
Skol	Non-Oily Lotion
Skol	Suntan Lotion for Normal Skin
Souls	Maximum Protection Sunblock
	Lotion - Broad Spectrum UV - SPF
	15
Souls	Sun Protection Lotion - SPF 15
Souls	Sun Protection Lotion - SPF 11
Souls	Sun Protection Lotion - SPF 6
Souls	Suntan Lotion
Stendhal	Lait Solaire Filtrant (Tanning
	Milk)
Tapen Ari	Suncheck No. 1 (Sunblock)
Ultima II	Scientific Bronzing Lotion
Ultima II	Scientific Protective Tanning
	Formula
Ultima II	Scientific Sun Block Lotion
Unit Pack P/L	Qld Sunny Sun Protective Lotion
Vanda	Vandatan Sunscreen Lotion
Vita-Glow	Vita-Glow E Lotion
Woolworths	Sunscreen Lotion

OILS

Ambre Solaire	Sun Tan Oil
Avon	Sunseekers Tanning Oil
Biokosma	Tibetan Sun Oil
Braggi	Sun Bronzing Oil
Coppertone	Dark Tanning Oil 2
Coppertone	2 Lite Formula Dark Tanning Oil
Coppertone	Tropical Blend Dark Tanning Oil
Gilseal	Baby Screen
Hawaii Tan Maker	Golden Tanning Oil Paba Sunscreen
ICI	Reef Tanning Oil
ICI	UV Suntan Oil
Peben	Hawaiian Tropic Dark Tanning Oil
Peben	Hawaiian Tropic - Royal Tanning Blend
Peben	Hawaiian Tropic - Professional Tanning Blend
Piz Buin	Oil 3
Sea and Ski	Baby Lotion Formula with Sunscreen
Sea and Ski	Dark Tanning Oil
Sea and Ski	Hawaiian Tanning Formula Dark Tanning Oil
Sea and Ski	Lite Baby Oil Formula
Stendhal	Varese Tanning Oil
Trygon Laboratories	Ralos Ultra-Violet Filter Oil
Ultima II	Scientific Deep Bronzing Oil
United Laboratories	UV WR Sunscreen
Vita-Glow	Vita-Glow E Radiol
Vitaplex	E Vitamin Suntan Oil

ATTACHMENT B

PREPARATIONS TAXABLE AT 32.5% UNDER ITEMS 20 OR 23
 IN THE SECOND SCHEDULE TO THE SALES TAX
 (EXEMPTIONS AND CLASSIFICATIONS) ACT
 OR TAXABLE AT THE GENERAL RATE OF 20% AS INDICATED:

Ambre Solaire	Tropical Oil	32.5% item 23
Avon	Flavor Savors Lip Glosses	32.5% item 20
Avon	Nurtura Replenishing Cream for the Face	32.5% item 20
Avon	Nurtura Replenishing Cream for the Body	32.5% item 23
Avon	Envira Protective Moisturising Lotion	32.5% item 20
Helena Rubinstein	Day Care Moisturiser	32.5% item 23
	Gloss Care Lipstick (Colourless)	32.5% item 20
	Moisture Regulation Lotion	32.5% item 23
	Moisture Regulation Cream	32.5% item 23
	Skin Life Moisturising Emulsion	32.5% item 20
	Skin Life Lightweight Emulsion (Natural)	32.5% item 20
	Skin Dew Moisturising Lotion	32.5% item 20
	Fresh Cover Cool Moisture Lotion	32.5% item 20
	Ultra-Feminine Emollient	
	Moisturising Emulsion	32.5% item 20
	Madame Rubinstein Day Care	

	Moisturisers	32.5% item 20
	Skin Life Body Smooth Lotion	32.5% item 23
	Skin Life Emulsion	32.5% item 20 & 23
	Skin Life Oil Regulating	
	Moisturiser	32.5% item 20
	Skin Life Lightweight Emulsion	
	Under Make-Up Moisturiser	32.5% item 20
	Natural Beauty Jojoba	
	Moisturising Lotion	32.5% item 23
	Natural Beauty Honey & Almond	
	Moisturising Lotion	32.5% item 23
	Natural Beauty Cocoa Butter	
	Moisturising Lotion	32.5% item 23
	Natural Beauty Aloe Vera	
	Moisturising Lotion	32.5% item 23
	Natural Beauty Avocado & Collagen	
	Moisturising Cream	32.5% item 23
Juvena	Deep Tanning Cream	32.5% item 23
	Deep Tanning Milk	32.5% item 23
	High Protection Compact Duo	32.5% item 20
	High Protection Cream	32.5% item 23
	High Protection Milk	32.5% item 23
	Lip Protection Stick	32.5% item 20
Miles Laboratory	Quenty Moistrising Cream	20% General Rate
	Quenty Beauty Fluid with	
	Collagen & Sunscreen	32.5% item 20
Richardson Vicks	Climacel Creme	32.5% item 20
	Climacel Lotion	32.5% item 20