

A medical appliance is defined as an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See 86 Ill. Adm. Code 130.310(c). (This is a GIL.)

March 30, 2010

Dear Xxxxx:

This letter is in response to your letter dated January 19, 2010, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I serve as corporate counsel for COMPANY a medical device manufacturer and sole source supplier, located in CITY/STATE. The intent of this correspondence is to respectfully request a Letter Ruling or GIL from the department regarding whether speech generating devices (SGDs) can be deemed exempt from sales & use tax in Illinois. The Food & Drug Administration, FDA, recognized SGDs were medical devices, 'used for medical purposes.' This occurred in 1983. The FDA calls SGDs '**powered communication systems**' (Sec. 890.3710). The phrase '**speech generating devices**' (SGDs) was coined by the Medicare Durable Medical Equipment Regional Carrier (DMERC) medical directors in 2000.

SGDs are recognized by the American Medical Association; American Academy of Neurology; and American Academy of Physical Medicine and Rehabilitation as an effective form of treatment for severe expressive communication disabilities, notably dysarthria, apraxia, aphasia and aphonia.

SGD need and SGD use is most common among individuals with (but not exclusively associated with):

ALS (amyotrophic lateral sclerosis or Lou Gehrig's Disease);  
Cerebral Palsy;

Locked in syndrome;  
Multiple Sclerosis  
Parkinson's disease;  
Brain stem stroke;  
Traumatic brain injury; and  
Severe developmental communication impairments (e.g., autism, mental retardation and other developmental disabilities)

The '**medical purpose**' of SGDs and the '**medical need**' for SGDs, is to treat severe expressive communication impairment that precludes individuals from meeting all daily communication needs using natural communication methods.

**All daily communication needs** are considered equally in determining whether an SGD is required. There is no priority given to specific conversations. The medical need for an SGD is not determined by who the individual seeks to communicate with; what the individual seeks to say; or where the communication will occur.

SGDs serve as a **functional by-pass** of body parts that are not working due to illness, injury or disability. To generate speech, the brain must first formulate a message; then, code the message into language; code motor instructions for the message to be spoken; transmit the instructions to the diaphragm, lungs, larynx, vocal folds, tongue, teeth and lips (collectively the speech organs); and those instructions must be executed correctly. These five steps have been described as a 'communication chain.' If, due to disability, any link in that chain is broken (malfunctions or is non-functional), the person's speech will be impaired. In this circumstance, the brain can achieve the original intent to communicate by re-directing the instructions to the fingers, for example, which when aided by an SGD, can create or select the message, which the SGD will then speak. The original intent to communicate is thereby achieved, through a by-pass of the body parts that are not working and with the use of an SGD. This functional by-pass for speech is identical to the functional by-pass role served by wheelchairs for individuals with mobility impairments. The Food and Drug Administration as well as numerous funding program decisions recognize the functional equivalence of SGDs and wheelchairs. SGDs are covered as prosthetic devices by many insurance companies, including Medicare.

SGD funding is not diagnosis dependent. No funding source – either public or private – limits SGD coverage to specific neurologic diagnoses by policy guidance or by practice. The list of common conditions (ALS, CP, etc) is illustrative, not exclusive.

An SGD is specifically intended for use in directly substituting for a malfunctioning part of the human body as described in 86 Ill. Adm. Code 130.310(c)(2). SGDs are prescribed by physicians.

The COMPANY is anxious to receive your final ruling as to whether the product is deemed to qualify for the reduced rate of sales and use tax in the state of Illinois.

Please feel free to contact me at any time to discuss any questions you may have pursuant to this request for ruling.

Thank you again for your prompt response to the important issue.

## DEPARTMENT'S RESPONSE:

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal rate of 6.25% plus applicable local taxes. These items are taxed at a reduced rate of 1% plus applicable local taxes. See 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use.

The definition of a medical appliance is "an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body." "Medical appliances" may be prescribed by licensed health care professionals for use by a patient, purchased by health care professionals for the use of patients, or purchased directly by individuals. See 86 Ill. Adm. Code 130.310(c)(2). Please note that not all items prescribed by or used by physicians or other licensed health care professionals qualify for the low rate.

Medical appliances that qualify for the reduced rate include such items as artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines. Other examples of items that qualify for the reduced rate are corrective medical appliances such as hearing aids, eyeglasses and contact lenses. As a general proposition, diagnostic, treatment, and rehabilitative equipment items do not qualify for the reduced rate of tax as medical appliances because such items are not "for use in directly substituting for a malfunctioning part of the body," 86 Ill. Adm. Code 130.310(c)(2).

Speech generating devices, while they may be used to assist a person with physical disabilities, do not directly substitute for a malfunctioning part of the body. These types of items do not fall within the definition of medical appliance and are, therefore, taxed at the state sales tax rate of 6.25% plus any applicable local taxes.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M. Boggess  
Associate Counsel

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