

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.)

May 20, 2010

Dear Xxxxx:

This letter is in response to your letter dated August 25, 2009, 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 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:

Our client is in the business of providing portable IV infusion pumps and supplies to disabled person [sic] who suffer from advanced stages of cancer. Our client leases the infusion pumps to patients pursuant to written prescriptions issued by licensed health professionals. This drug delivery device (usually measured doses of chemotherapy drugs) is temporarily incorporated into a patient for the treatment of the disease as a needed substitute for a deformity or malfunction of the body human bodies [sic] operating in a way other than the normal, usual fashion.

The question is would these medical appliances and related supplies qualify for the lower rate under Illinois Use Tax Act pursuant to 86 Ill Adm. Code 130.310(c)(2) regarding medical appliances sold or used in Illinois by our client pursuant to a written prescription or order of a licensed physician. It is intended that these infusion pumps are to substitute for the malfunctioning parts of the body that cannot fend off the advance of cancer.

The Illinois Department of Revenue (the 'Department') has apparently not ruled on the same or similar issue for our client, nor has our client previously submitted a ruling request on the same or similar issue. In addition, the client is not currently under audit by the Department nor is it in litigation with the Department.

If the Department requires any additional information or has any questions on this request for a private letter ruling, please contact the undersigned.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Your letter provides insufficient information regarding the nature and use of the portable IV infusion pumps and supplies. Therefore, it is the Department's position that we must decline to issue a Private Letter Ruling. However, we hope the following will be helpful in addressing your question.

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 State rate of 6.25% plus applicable local taxes. These items are taxed at a reduced State 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).

Generally, infusion pumps do not substitute for a malfunctioning part of the human body or act as a corrective appliance, such as hearing aids or eyeglasses. Rather, infusion pumps are medical tools used in the treatment of patients. We understand that they are normally used to administer drugs. Drug administration systems do not qualify as medical appliances that are subject to the low State rate of tax.

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

Very truly yours,

Richard S. Wolters
Associate Counsel