

This letter concerns the low 1% State rate of tax applicable to drugs, medicines and medical appliances. See, 86 Ill. Adm. Code 130.311. (This is a GIL.)

November 5, 2010

Dear Xxxxx:

This letter is in response to your letter dated June 14, 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:

**PURPOSE:**

COMPANY is seeking an interpretation of how Illinois Tax Law will apply to a new product it will be selling: PRODUCT.

**FACTS:**

COMPANY is a medical device and pharmaceutical company, headquartered in CITY/STATE, with a manufacturing facility in CITY/STATE2.

COMPANY will be selling a new product that recently received FDA/NDA approval. The product's marketing name will be PRODUCT. The active ingredient is Polidocanol, which is recognized in the US Pharmacopoeia. PRODUCT is a controlled drug that is required to be labeled with 'Rx Only' on the packaging (copy of packaging attached). Below is a statement of facts related to PRODUCT:

Veins channel oxygen-depleted blood back toward the heart through one-way valves. If the valves of the veins do not function well, blood does not flow efficiently. The veins become enlarged because they are congested with blood. These enlarged veins are commonly called spider veins or varicose veins. Spider veins are small red, blue or purple veins on the

surface of the skin. Varicose veins are larger distended veins that are located somewhat deeper than spider veins. There are several adverse consequences of untreated varicose veins, and their severity will vary from person to person depending on the circumstances.

Sclerotherapy is a common treatment for small (spider) and medium size (reticular) veins. A tiny needle is used to inject the veins with a solution (called a sclerosant) that irritates the lining of the vein. In response, the veins collapse and are reabsorbed. The surface veins are no longer visible. Depending on the size and location of the veins, different types and strengths of sclerosants are used. With this procedure, veins can be dealt with at an early stage, helping to prevent further complications including surgical removal of veins.

Polidocanol is a well recognized worldwide standard of care for venous sclerotherapy. Such treatment is typically performed by vascular surgeons, phlebologists, and dermatologists. Polidocanol was recently approved by FDA for use in the U.S. as a treatment for varicose veins. **The product is classified as a prescription pharmaceutical by the FDA.** The trade name for this product in the United States is PRODUCT.

### **Discussion:**

COMPANY believes that PRODUCT should qualify for the reduced rate of Retailers' Occupation Tax of 1%, plus applicable local taxes, as a drug or medicine because it is classified as a prescription pharmaceutical by the FDA and is intended to be used to treat small (spider) and medium (reticular) veins. It is also intended to eliminate veins that no longer function properly. Although sclerotherapy has the benefit of improving aesthetic appearance, its medical uses and ingredients should deem PRODUCT to be considered a drug or medicine and to not be cosmetic in nature. Furthermore, PRODUCT is sold only on prescription and sold directly to physicians, hospitals and medical clinics for their use with their patients.

Under 86 Ill. Adm. Code 130.310, drugs and medicines are subject to the reduced tax rate of 1%, plus applicable local taxes, if they are for human use and purport on the label to have medicinal qualities.

PRODUCT is classified as a prescription pharmaceutical by the FDA. If the valves of veins don't function well, blood doesn't flow efficiently. For these small and medium size red, blue or purple veins on the surface of the skin that no longer function properly, polidocanol is used in sclerotherapy treatment to eliminate the veins. With this procedure, veins can be dealt with at an early stage, helping to prevent further complications including surgical removal of veins. Therefore, polidocanol should be considered a drug and subject to the reduced tax rate of 1%, plus applicable local taxes.

COMPANY respectfully requests for the Illinois Department of Revenue to confirm these conclusions for this newly approved controlled drug or to provide any other guidance as appropriate.

If you have any questions or concerns, please contact INDIVIDUAL.

## DEPARTMENT'S RESPONSE:

Although we cannot give you a specific answer in the form of a General Information Letter, we hope you find the following helpful.

Please see the Department's regulation at 86 Ill. Adm. Code Section 130.311, which is its regulations governing Drugs, Medicines, Medical Appliances, and Grooming and Hygiene Products. Those products that qualify as food, drugs, medicines and medical appliances are taxed at a lower State rate of 1% plus any applicable local taxes. Those items that do not qualify for the low rate of tax are taxed at the general merchandise rate of 6.25% plus applicable local taxes.

A medicine or drug is any pill, powder, potion, salve, or other preparation for human use that purports on the label to have medicinal qualities. A written claim on the label that a product is intended to cure or treat disease, illness, injury or pain, or to mitigate the symptoms of such disease, illness, injury or pain constitutes a medicinal claim. See Section 130.311 for examples of medicinal claims. Examples of qualifying products include prescription drugs or medicines and nonprescription drugs or medicines such as aspirin or other pain relievers that purport on the label to have medicinal qualities. Beginning on September 1, 2009, the term "nonprescription medicines and drugs" does not include grooming and hygiene products. Grooming and hygiene products include, but are not limited to, soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, unless those products are available by prescription only. If an item is a nonprescription grooming and hygiene product, it will be taxed at the State 6.25% general merchandise rate regardless of any medicinal claims made on the product's label.

A medical appliance is an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the human body. Included in the exemption as medical appliances are such items as artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines (including the dialyzer). Corrective medical appliances such as hearing aids, eyeglasses and contact lenses qualify for exemption.

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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