

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 130.311. (This is a GIL.)

March 29, 2011

Dear Xxxxx:

This letter is in response to your letter dated February 23, 2011, 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:

COMPANY is requesting a letter ruling in regards to the taxability of Breathe Right nasal strips. Breathe Right nasal strips are not medicated, used to open the nasal passage to relieve symptoms of a deviated septum, common cold congestion and snoring. I have attached product information.

It is our understanding that Breathe Right nasal strips are part of the Federal FSA program. I have also included information regarding the eligibility of Breathe Right nasal strips in the FSA program.

Thank you in advance for your time and assistance.

DEPARTMENT'S RESPONSE:

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 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. Generally, products that simply improve airflow, thereby potentially, reducing snoring or relieving nasal congestion would not qualify as a medical appliance because they are not intended by the manufacturer for use in directly substituting for a malfunctioning part of the human body.

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,

Debra M. Boggess
Associate Counsel

DMB:msk