

This letter discusses the State tax rates applicable to sales of medical appliances. See 86 Ill. Adm. Code 130.311. (This is a GIL.)

August 8, 2013

Dear Xxxxx:

This letter is in response to your letter dated July 18, 2013, 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:

We are an out of state company who will be attending the Expo. We requested and received the Special Event Tax Collection and Payment Coupon which indicated that the sales tax rate would be 9.25%. We will be selling a medical device known as DEVICE and we interpret Regulation under Title 86 part 130 Section 130.311, Medicines, Medical Appliances and Grooming and Hygiene Product to mean that our product qualifies for the lower rate of tax, i.e., 2.25%.

Section 130.311 gives examples of medical appliances that qualify for the low rate of tax that is not all inclusive. A couple of examples listed under paragraph 2) are hearing aids and eyeglasses.

A hearing aid is a medical device (an instrument, apparatus, implant, in vitro reagent, or similar or related article that is used to diagnose, prevent, or treat disease or other conditions, and does not achieve its purposes through chemical action within or on the body) that is regulated by the FDA.

Eyeglasses means lenses for correcting or assisting defective eyesight. Defective means

1. Imperfect or faulty
2. Lacking or deficient

Our product, the DEVICE, is a medical device regulated by the FDA. It is a cold and compressions system for joint relief and muscle recovery. It treats conditions of muscle recovery, joint injury, poor circulation, muscle and joint pain, reduces swelling and all effects of Delayed Onset of Muscle Soreness.

The DEVICE can be viewed at EMAIL ADDRESS, product and accessories that will be sold at the Special Event. A copy of our FDA 510(k) summary can be furnished to you upon request.

Please revisit the sales tax rate of 9.25% that was given to us.

DEPARTMENT'S RESPONSE:

The Department's regulation regarding the appropriate tax rate for medical appliances can be found at 86 Ill. Adm. Code Section 130.311. Those products that qualify as medical appliances are taxed at a lower State rate of 1% plus any applicable local taxes. Those items that do not qualify for the lower rate of tax are taxed at the general merchandise rate of 6.25% plus applicable local taxes.

A medical appliance is an item that directly substitutes 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), as these products directly substitute for a malfunctioning part of the human body. Corrective medical appliances such as hearing aids, eyeglasses and contact lenses qualify for exemption. The product about which you inquire does not directly substitute for a malfunctioning part of the human body and, thus, would be subject to the higher State rate of 6.25% plus applicable local taxes.

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: