

## ST 15-0023-GIL 04/24/2015 EXEMPT ORGANIZATIONS

Nonprofit hospitals which qualify as exclusively charitable institutions are not taxable when selling food, medicine or grooming and hygiene products to their patients in connection with the furnishing of hospital service to them. See 86 Ill. Adm. Code 130.2005(b)(1)(a) and 130.2005(a)(2)(A).

April 24, 2015

Dear XXXX:

This letter is in response to your letter dated December 19, 2014, 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:

This is a request for a Private Letter Ruling or General Information Letter pursuant to the provisions of 2 Ill. Admin. Code 1200. The (University) is requesting information from the Illinois Department of Revenue (IDOR) regarding the exemption of Illinois Retailers’ Occupation Tax on the sale of beauty products to patients, students, and staff. Students, staff, and members of the general public are eligible to become patients.

The University’s mission is teaching, research, public service, and economic development. As part of its programs for education and public service, the University trains professionals in a variety of public service disciplines, including health care professionals. The University serves as a major health care provider to underserved communities. The University operates a hospital and healthcare clinics in conjunction with its medical school. All of these facilities utilize the same E number (sales tax exemption certificate number) issued by the IDOR.

### **RELEVANT CITATIONS**

1) Per Illinois Retailers' Occupation Tax 35 ILCS 120/2:

A tax is imposed upon persons engaged in the business of selling at retail tangible personal property.

2) Per Illinois Regulation Title 86 Part 130 Section 130.2005(b)(1), Hospital Sales:

Nonprofit hospitals which qualify as exclusively charitable institutions are not taxable when selling food or medicine to their patients in connection with the furnishing of hospital service to them.

In the case of hospitals which qualify as charitable institutions, such as hospitals are not taxable when selling drugs to anyone because this is for the relief of the sick (which is the hospital's primary purpose) and so is "primarily for the purpose of" such hospitals, thus qualifying such transactions for tax exemption.

3) Per ST 99-0044-GIL (Jan. 29, 1999) Exempt Organizations:

Section 130.2005(b)(1): This regulation would also apply to health care clinics that have received an E number from the Department.

4) Per Illinois Regulation Title 86 Part 130 Section 130.2005(a)(2), Sales to Members:

The first exception is that sales by such an organization are not taxable if they are made to the organization's members, or to its students in the case of a school or to its patients in the case of a nonprofit hospital which qualifies as a charitable institution, primarily for the purposes of the selling organization.

5) Per Illinois Regulation Title 86 Part 130 Section 130.2005(a)(3), Noncompetitive Sales:

The second exception is that sales by exclusively charitable, religious or educational organizations are not subject to the Retailers' Occupation Tax when it can be said that such selling is noncompetitive with business establishments.

6) Per Illinois Regulation Title 86 Part 130 Section 130.311(b), Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products:

Medicines and Drugs. Except for grooming and hygiene products described in subsection (c), 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.

## **FACTS**

The University offers a medical education program and provides medical services to patients, including recommendations and treatment for medical procedures and selling medical products. The procedures and products relate to the University's educational and public service tax exempt purpose.

The products (see attached list) are composed of medically proven ingredients (medicinal purposes). Some of the products contain high concentrations of active ingredients. In several of the products, the active ingredients increase collagen and elastin production, reducing fine lines and wrinkles and decreasing hyperpigmentation.

At the University, sales of products are limited to patients only. The products are not on display. Any one may become a patient. The patient must make an appointment and be seen by a physician or licensed medical esthetician. Based on the diagnosis and treatment, the products are sold to the patient at the end of the appointment from the available on-site inventory. If refills are required, the established patient must call the physician's office for pick-up or the products are mailed directly to him/her.

Some of these products may be available for purchase from other physicians' offices, pharmacies, or online retail locations without prescriptions, such as amazon.com or dermstore.com.

## **RULING REQUESTED INFORMATION REQUESTED**

The University requests confirmation regarding the possibility of sales tax exemption and/or the high vs. low rate for sales of the following types of products to patients:

- 1) Chemical peels
- 2) Skin/eye/lip cleansers, creams, moisturizers, masks, lotions, infusions, scrubs, balms, sticks, and gels
- 3) Cosmetic injections, such as Botox
- 4) Anti-aging kits

5) Other various beauty products

See complete list of products available for purchase.

If these products are available for purchase at other locations (i.e., competition), would the sales still be exempt under the hospital sales and/or sales to members exemptions?

If these products are subject to the Retailers' Occupation Tax, are they taxed at the high or low rate?

Please contact me at [xxx-xxx-xxxx] or [email] if you have any questions or require additional information.

Thank you for your assistance in this matter.

**DEPARTMENT'S RESPONSE:**

We cannot make determinations regarding the taxability of each of the products that you have inquired about without more information about each product and without examining the product labels for each one. However, your letter mentions that many of the items are "beauty products." We urge you to closely examine the rules regarding grooming and hygiene products and drugs to determine which products are taxed at the State rate of 6.25% for general merchandise and which products are taxed at the lower 1% rate.

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. 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. Please refer to 86 Ill. Adm. Code 130.311 for a list of common grooming and hygiene products.

While the sale of tangible personal property at retail by exclusively charitable, religious and educational organizations is generally subject to Retailers' Occupation Tax, there are some very limited exceptions. See 86 Ill. Adm. Code 130.2005.

Specifically, with respect to nonprofit hospitals, please see the Department's regulation at 86 Ill. Adm. Code 130.2005(b)(1)(A). Under this subpart, nonprofit hospitals that qualify as exclusively charitable institutions and that have obtained an exemption identification ("E") number from the Department are exempt from Retailers' Occupation Tax ("ROT") when selling medicine to their patients in connection with the furnishing of hospital service to them because this is for the relief of the sick (which is the hospital's primary purpose) and so is "primarily for the purpose of" such hospitals, thus qualifying such transactions for tax exemption. However, a hospital incurs ROT liability when selling candy, chewing gum, tobacco products, razor blades and the like at retail even when such items are sold only to patients because (unlike food and medicine) these items are not necessary to the furnishing of hospital service, and they are competitive.

A nonprofit hospital that qualifies as exclusively charitable does not incur ROT on the sale of drugs to its patients in furtherance of providing its hospital service to them. Nor will the exempt hospital incur ROT when selling other grooming and hygiene products to the patient while he/she is a patient in the hospital or clinic because these products are provided in furtherance of the patient's care. See 86 Ill. Adm. Code 130.2005(a)(2)(a). However, after a patient has left the hospital, if he/she returns to purchase products which do not meet the definition of "drug," the hospital will incur ROT when selling such items. This generally includes grooming and hygiene products.

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,

Cara Bishop  
Associate Counsel

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