

ST 15-0026-GIL 04/30/2015 MEDICAL APPLIANCES

A medical appliance is an item that directly substitutes for a malfunctioning part of the human body. Products that qualify as medical appliances are taxed at a lower State rate of 1% plus any applicable local taxes. See 86 Ill. Adm. Code 130.311. (This is a GIL.)

April 30, 2015

Dear XXXX:

This letter is in response to your letter dated February 18, 2015, 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 (“the company”) is a national sales tax filing firm, and is a Certified Service Provider (“CSP”) certified under Streamlined Sales Tax (“SST”). COMPANY calculates sales and use taxes and generates and files tax returns in all tax jurisdictions at all levels – state, county, city, local and special district taxes.

The company respectfully requests a ruling concerning the sales and use tax as it should or should not be applied to non-prescription durable medical equipment that is not for home use. If taxable, we also request a decision of the tax rate to be applied to this transaction.

We are currently relying on Illinois regulation §86ILAC130.311 to determine the taxability of the non-prescription durable medical equipment that is not for home use.

Regulations and Rules

86ILAC130311(d) Medical Appliances: A medical appliance is an item that is used to directly substitute for a malfunctioning part of the human body.

86ILAC130.311(d)(1) For purposes of this Section, an item that becomes part of the human body by substituting for any part of the body that is lost or diminished because of congenital defects, trauma, infection, tumors or disease is considered a medical appliance. Examples of medical appliances that will qualify the product for the low rate of tax include, but are not limited to:

86ILAC130.311 (d)(1)(A) breast implants that restore breasts after loss due to cancer;

86ILAC1303.311(d)(1)(B) heart pacemakers;

86ILAC(d)(1)(C) artificial limbs;

86ILAC130.311(d)(1)(D) dental prosthetics;

86ILAC130.311(d)(1)(E) crutches and orthopedic braces;

86ILAC130.311(d)(1)(F) dialysis machines (including the dialyzer);

86ILAC130.311(d)(1)(G) wheelchairs; and

86ILAC130.311(d)(1)(H) mastectomy forms and bras.

86ILAC130.311(d)(2) Corrective medical appliances such as hearing aids, eyeglasses, contact lens and orthodontic braces qualify as medical appliances subject to the low rate of tax.

86ILAC130.311(d)(4) Items transferred incident to cosmetic procedures are not considered medical appliances. For purposes of this Section, a cosmetic procedure means any procedure performed on an individual that is directed at improving the individual's appearance and that does not prevent or treat illness or disease, promote the proper function of the body or substitute for any part of the body that is lost or diminished because of congenital defects, trauma, infection, tumors or disease. Cosmetic procedures include, but are not limited to, elective breast, pectoral or buttock augmentation.

86ILAC130.311(d)(5) Diagnostic equipment shall not be deemed to be a medical appliance, except as provided in Section 130.311(e). Other medical tools, devices and equipment such as x-ray machines, laboratory

equipment and surgical instruments that may be used in the treatment of patients but that do not directly substitute for a malfunctioning part of the human body do not qualify as medical appliances. Sometimes a kit of items is sold where the purchaser will use the kit items to perform treatment upon himself or herself. The kit will contain paraphernalia and sometimes medicines. An example of a kit sold for the removal of ear wax. Because the paraphernalia hardware is for treatment, it generally does not qualify as a medical appliance. However, the Department will consider the selling price of the entire kit to be taxable at the reduced rate when the value of the medicines in the kit is more than half of the total selling price of the kit.

86ILAC130.311(d)(6) Supplies, such as cotton swabs, disposable diapers, toilet paper, tissues and towelettes and cosmetics, such as lipsticks, perfume and hair tonics, do not qualify for the reduced rate.

86ILAC130.311(d)(7) Medical appliances may be prescribed by licensed health care professionals for use by a patient, purchased by healthcare professionals for the use of patients or purchased directly by individuals. Purchases of medical appliances by lessors that will be leased to others for human use also qualify for the reduced rate of tax.

Analysis & Conclusion

We apply the commonly used definition of durable medical equipment which shall mean equipment including repair and replacement parts for same which:

- (1) Can withstand repeated use; and
- (2) Is primarily and customarily used to serve a medical purpose; and
- (3) Generally is not useful to a person in the absence of illness or injury; and
- (4) Is not worn in or on the body.

We respectfully request the State to provide a response as to the sales tax rate and taxability of the non-prescription durable medical equipment that is not for home use.

DEPARTMENT'S RESPONSE:

The Department's regulation regarding the appropriate tax rate for medical appliances can be found at 86 Ill. Adm. Code 130.311. 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. 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 reduced 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 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 130.311(d).

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:kd