

ST 15-0080-GIL 12/23/15 FOOD, DRUGS & MEDICAL APPLIANCES

This letter discusses the rules regarding the taxability of drugs and medical appliances. See 86 Ill. Adm. Code 130.311. (This is a GIL.)

December 23, 2015

Dear Xxxxx:

This letter is in response to your letter dated October 15, 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:

I’m writing on behalf of ABC, a medical device manufacturing corporation located in City, STATE1, to request an official ruling as to whether our product is qualified for sales/use tax exemption in the state of Illinois. We do not have any other physical location outside of STATE1. We may have sales representatives who occasionally travel to Illinois or who resides in Illinois.

Our PRODUCT is approved by FDA and regulated as a medical device. It is a spring-like steroid-releasing implant that offers localized drug delivery directly to the sinus tissue, is inserted by a physician to maintain the surgical opening, expands to prop open the ethmoid sinus and gradually delivers corticosteroid with anti-inflammatory properties directly to the sinus lining as the implant dissolves. The implant is stored in a “delivery system” and sold as a bundle, a type of medical tool/procedure kit that is labeled to be dispensed only by the prescription or order of a licensed practitioner, and is intended for one-time use on a single patient only. One cannot purchase or use the implant without a delivery system, as they are simply two integral parts of ONE product. We now sell to hospitals, ambulatory surgery centers, and doctor’s offices for scheduled surgeries and/or for inventory stocking.

I found an existing ruling “ST-15-0002-PLR” on a similar medical device product at Illinois DOR web site, and given it is not exactly the same as our product, we’d like to request an official ruling directly from your department regarding taxability of our product in Illinois, and if it turns out to be taxable, the tax rate we shall charge.

More information is available on our website. The video shows what the product looks like and how it works.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101.

Please see the Department's regulation at 86 Ill. Adm. Code Section 130.311, which is its regulation governing Drugs, Medicines, Medical Appliances, and Grooming and Hygiene Products. Those products that qualify as 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. 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 used to directly substitute 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. Moreover, generally, home glucose monitors, test strips and related supplies used to treat human diabetes also qualify for the 1% State rate of tax. See subsection (d) of 86 Ill. Adm. Code 130.311.

Due to the limited information contained in your letter, we cannot determine whether PRODUCT qualifies for the lower State rate of 1% as either a medical appliance or a drug. We cannot make such a determination without more information regarding how the product is used and without examining the claims made on the label. Please apply the above referenced regulation to the product in order to determine the appropriate tax rate.

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,

Cara Bishop
Associate Counsel

CB:bkl