

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

March 15, 2016

Dear Xxxxx:

This letter is in response to your letter dated January 26, 2016, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Admin. Code § 1200.110, governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter dated October 15, 2015, you stated and made inquiry as follows:

I’m writing on behalf of ABC, a medical device manufacturing corporation located in CITY 1, STATE 1, 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 STATE 1. We may have sales representatives who occasionally travel to Illinois or who reside in Illinois.

Our product “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: [www.XXXXXXXXXXXXXX.XXX](http://www.XXXXXXXXXXXXXX.XXX) The video "VIDEO" shows what the product looks like and how it works.

In your letter dated January 26, 2016 you have stated and made inquiry as follows:

Thanks for your response dated XX/23/20XX re: my inquiry submitted on XX/15/20XX. In the letter you indicated that without more information regarding how the product is used and without examining the claims made on the label, you cannot determine whether PRODUCT qualifies for the lower State rate of 1% as either a medical appliance or a drug. Thus, we are submitting herewith your response letter and our product inserts (Instructions for Use) for your further review and determination on qualification of lower tax rate of our product.

And a subsequent question re: the above, should our product is [sic] determined to qualify for the 1% lower state rate, please confirm we can update our system to charge 1% flat rate for all Illinois customers, as we are out-of-state vendor.

## **DEPARTMENT'S RESPONSE:**

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the basic State rate of 6.25% plus applicable local taxes. These items are taxed at a reduced State rate of 1% plus applicable local taxes. See 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use.

The Department's regulation at 86 Ill. Adm. Code Section 130.311 governs Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products. 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.

Simply because a product is sold by "prescription only" does not mean that the product automatically qualifies for the low rate of tax as a medicine or drug. A medicine or drug is defined as 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.

The information that you provided indicates that the product provides a sustained release of the drug mometasone furoate via a bioabsorbable sinus implant. Based upon the representations made in your original letter dated MONTH 15, 20XX as well as your follow up letter dated MONTH 26, 20XX and the additional information you have provided regarding the instructions for use of the product, we believe that the PRODUCT implant qualifies as a medicine or drug and is eligible for the lower State tax rate of 1% plus any applicable local taxes.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

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,

Richard S. Wolters  
Chairman, Private Letter Ruling Committee

RW:CB:bkl