

This letter explains that hospitals that meet the criteria for an exemption under Section 2-9 of the Retailers' Occupation Tax Act (35 ILCS 120/2-9) do not incur Retailers' Occupation Tax 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). (This is a PLR.)

August 17, 2016

Dear Xxxxx:

This letter is in response to your letter dated March 21, 2016, in which you requested 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 COMPANY 1. for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY 1 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 you have stated and made inquiry as follows:

We write to request a private letter ruling from the Illinois Department of Revenue ("Department") on behalf of COMPANY 1, pursuant to 2 Ill. Adm. Code 1200.110. This request concerns the application of the Retailers' Occupation Tax and related state and local taxes ("ROT") to COMPANY 1's sales of tangible personal property ("TPP") to patients as part of its provision of medical services. As described in more detail below COMPANY 1 believes that its sales of TPP are exempt from ROT under the exclusively charitable, nonprofit hospital exceptions found in 35 ILCS 1201/1 and 86 Ill. Adm. Code 130.2005. A completed Power of Attorney authorization (Form IL-2848) is enclosed as Exhibit A.

## **I. Statement of Facts**

### **A. General Background**

COMPANY 2 is a multi institutional health care system comprised of 13 hospitals and an integrated physicians network across Illinois and STATE. As its name implies,

COMPANY 2 is a healing ministry guided by the historic mission of the GROUP. A significant part of its mission is to reach beyond the walls of the hospital to provide benefits to its local communities -- especially those who are in need, poor, and are under- or uninsured. COMPANY 2 and COMPANY 1 are tax-exempt nonprofit corporations under section 501(c)(3) of the Internal Revenue Code. A copy of the I.R.C. tax-exempt certification for COMPANY 1 is enclosed as Exhibit B.

In 2008, COMPANY 2 organized COMPANY 1 to provide primary and specialty physician services to the communities COMPANY 2 serves. COMPANY 1 is a critical component of the COMPANY 2 strategy, which focuses on bringing physicians, technology, and patients together to improve the overall health of the communities it serves.

COMPANY 1 is based in CITY, Illinois. It is comprised of more than XXX medical professionals and nearly YYY associated colleagues. COMPANY 1 is a "hospital affiliate" within the meaning of the Retailers' Occupation Tax Act and other similar statutes (see 35 ILCS 105/3-8, 110/3-8, 115/308 [sic] and 120/2-9). COMPANY 1 provides a wide range of medical services, including family medicine, internal medicine, pediatrics, gastroenterology, general surgery, infectious disease, oncology, nephrology, neurosurgery, occupational medicine, orthopaedic surgery, urology and podiatry. COMPANY 1 conducts its operations in FACILITY and Z stand-alone medical facilities.

Like its parent, COMPANY 1 is a tax-exempt nonprofit corporation under section 501(c)(3) of the Internal Revenue Code. COMPANY 1 also has obtained an Illinois Hospital Sales Tax Exemption Certificate from the Department, as a hospital affiliate of COMPANY 2 under the charitable hospital sales tax exemption set forth in 35 ILCS 120/2-9. A copy of the COMPANY 1's current Illinois Hospital Sales Tax Exemption Certificate, which was issued in MONTH 20XX, is enclosed as Exhibit C.

## **B. Sales of TPP**

On occasion, COMPANY 1 sells TPP to its patients in connection with its provision of medical services. The types of TPP sold pursuant to these services include, but are not limited to, food, medication, casting supplies and materials, splints, slings, diabetic shoes, surgical boots, foot inserts, bandages, and nebulizers. A detailed list of the types of TPP currently sold by COMPANY 1 is provided in Exhibit D. The list contains some items that, if taxable, would be subject to the State rate of 6.25% for general merchandise, and some items that would be taxed at the State's 1% rate for prescription and nonprescription medicines, drugs, medical appliances and food. 35 ILCS 120/2-10. Because the TTP is sold at various locations around the state, associated with medical care provided by COMPANY 1's medical professionals at a variety of locations, if its sales were taxable, a variety of local taxes, imposed by local governing bodies with home rule authority, likely also would apply to these sales.

On occasion, COMPANY 1 sells TPP to non-patients. One example of such a transaction would be the sale of footwear to non-patients at a podiatry clinic.

## **II. Ruling Requested**

COMPANY 1 requests a ruling that for time periods on and after the Department's issuance of a Charitable Hospital Sales Tax Exemption to COMPANY 1 (MONTH 20XX), COMPANY 1's sales of TPP pursuant to the provision of medical services are exempt from ROT under the exclusively charitable, nonprofit hospital exceptions found in 35 ILCS 120/1 and 86 Ill. Adm. Code 130.2005.

### **III. Authorities and Analysis**

The Retailers' Occupation Tax Act ("Act") imposes tax "upon persons engaged in the business of selling at retail tangible personal property..." 35 ILCS 120/2. The Act goes on to provide that persons "organized and operated exclusively for charitable, religious or educational purpose" are exempt from tax "to the extent of sale by such person to its members, students, patients or inmates of tangible personal property to be used primarily for the purposes of such person". *Id.* Pursuant to this provision, the Department's administrative regulations delineate three situations in which exclusively charitable, religious and education organizations are exempt from Retailers' Occupation Tax liability. 86 Ill. Adm. Code 130.2005(a)(1)(E) (the "Regulation"). Two of those exceptions apply here.

#### **A. COMPANY 1's Sales of TPP Pursuant to the Provisions of Medical Services are Exempt from any Sales-Based Tax Under Regulation Sub-Part (a)(2)(A).**

Subpart (a)(2)(A) of the Regulation provides that sales by exclusively charitable, religious and education organizations "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." (emphasis added). COMPANY 1 seeks confirmation that to the extent it is selling TPP to its patients in connection with the furnishing of medical services, as a charitable hospital affiliate, it qualifies for this exemption, and is not obligated to collect or remit tax on such sales.

This conclusion is supported by two recent rulings issued by the Department. In ST 15-0023-GIL (04/24/2015), the Department was asked to consider whether a University operating a hospital and healthcare clinics in conjunction with its medical school was obligated to collect ROT on its sales of skin care products to patients by prescription. The taxpayer's hospital and healthcare clinics had been issued a sales tax exemption certificate by the Department.

In its Response to the taxpayer's inquiry, the Department noted that while it could not make determinations regarding the taxability of each product sold without more information, it directed the taxpayer's attention to subpart (a)(2)(A) of the Regulation, stating:

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.

The Department went on to state that if the patient returned to the hospital or clinic to purchase products that did not meet the definition of "drug," the taxpayer would incur ROT when selling such items.

Later in 2015, the Department issued another GIL to the same taxpayer in response to the taxpayer's request for clarification regarding the April 23 GIL. ST 15-0066-GIL (10/16/2015). In its request for clarification, the taxpayer noted that some of the products it prescribed to patients were available for purchase from other physician's offices, pharmacies, or other retail store locations (including online stores) without a prescription. The taxpayer raised four requests for clarification, including the following:

- 1) If a patient undergoes a procedure at a clinic/doctor/s office, would the drugs/medicines/beauty products be exempt from the sales tax because the products are provided in furtherance of the patient's care?
- 2) If a doctor transfers beauty products incident to services rendered during an appointment, would sales tax be calculated and submitted based on one of the four methods per Illinois Regulation title 86 Part 140.101?

In its response to these inquires, the Department reiterated the statement cited above and further stated:

In response to your first question, if a patient undergoes a procedure at a nonprofit hospital or clinic with a valid E-number, the drugs and products which are provided by the exempt entity in furtherance of the patient's care while he/she is receiving care in the hospital or clinic are exempt from ROT because the products are provided in furtherance of the patient's care. See 86 Ill. Adm. Code 130.205(a)(2)(A). Again, 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.

Regarding your second question, if a physician at a nonprofit hospital or clinic which has a valid E-number transfers products incident to service rendered during a patient's appointment, the tangible personal property which the physician transfers incident to a patient's care in the hospital or clinic is exempt from ROT. See 86 Ill. Adm. Code 130.2005(a)(2)(A).

These recently issued GILs support the conclusion that the TPP sold by COMPANY 1 pursuant to its provision of medical care is exempt from ROT under subpart (a)(2)(A) of the Regulation. COMPANY 1 is a hospital affiliate that qualifies for the charitable hospital sales tax exemption under 35 ILCS 120/2-9. It has a valid E-number, as seen in Exhibit B. The TPP provided by COMPANY 1 is in furtherance of its provision of care

to a patient in a COMPANY 2 facility. Therefore COMPANY 1's sales of TPP are exempt from ROT.

**B. COMPANY 1's Sales of Food and Medicine are Exempt from any Sales Based Tax Pursuant to Regulation Sub-part (b)(1).**

COMPANY 1's sales of food, medicine and drugs to its patients also qualify as tax exempt under subpart (b)(1)(A) & (B) of the Regulation. Subpart (b)(1)(A) provides that 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." Similarly, subpart (b)(1)(A) provides that hospital charitable institutions 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 hospital, thus qualifying such transactions for tax exemption."

Finally, we wish to advise you that in attempting to determine the correct application of the ROT to COMPANY 1's facts, we spoke with Jerilynn Gorden, Deputy General Counsel, Sales/Excise Tax at the Department. Our communications with Ms. Gorden, who is copied on this correspondence, lead us to believe that the aforementioned analysis is consistent with the Department's views.

**IV Concluding Statements**

Consistent with 2 Ill. Adm. Code 1200.110, COMPANY 1 state as follows:

1. COMPANY 1 is unable to locate any authority contrary to the views set for the above.
2. COMPANY 1 is not currently under examination by the Department, and its issue is not pending in litigation in a case involving COMPANY 1.
3. To the best of the knowledge of both COMPANY 1 and its representative, the Department has not previously ruled on the same or a similar issue for COMPANY 1 or its predecessor, and neither COMPANY 1 nor its representative have previously submitted the same or a similar issue to the Department but withdrew the request before a letter ruling was issued.

COMPANY 1 does not request the deletion of any trade secrets pursuant to 2 Ill. Adm. Code 1200.110(c).

If you have any questions or require any additional information, please contact me at ####. I would be happy to meet with you at your convenience to respond to any questions you may have about this request. Please also contact me in advance if you plan to issue an adverse ruling, so the COMPANY 1 may withdraw this request.

**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. See 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. See 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as “sales” tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers’ Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

A person whose activities are organized and conducted primarily as a not-for-profit service enterprise, and who engages in selling tangible personal property at retail (whether to the public or merely to members and their guests) is engaged in the business of selling tangible personal property at retail with respect to such transactions, excepting only a person organized and operated exclusively for charitable, religious or educational purposes either (1), to the extent of sales by such person to its members, students, patients or inmates of tangible personal property to be used primarily for the purposes of such person, or (2), to the extent of sales by such person of tangible personal property which is not sold or offered for sale by persons organized for profit. 35 ILCS 120/1.

While the sale of tangible personal property at retail by exclusively charitable, religious and education 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 food or medicine to their patients in connection with the furnishing of hospital service to them. Such hospitals are not taxable when selling drugs to non-patients as well. 86 Ill. Adm. Code 130.2005(b)(1)(B). They are also exempt from ROT on their operation of restaurant facilities that are conducted primarily for the benefit of the hospitals’ employees and are not open to the public.

In ST 14-0048 (GIL) the Department advised that hospitals that meet the criteria for exemption under Section 2-9 of the Retailers’ Occupation Tax Act (35 ILCS 120/2-9) do not incur Retailers’ Occupation Tax on sales of food and medicine to their patients or on sales of food from a cafeteria that is operated for the benefit of their employees and that is not open to the public.

In ST 15-0023 (GIL), the Department stated that 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.”

In ST 15-0066, the Department provided additional guidance.

“In response to your first question, if a patient undergoes a procedure at a nonprofit hospital or clinic with a valid E-number, the drugs and products which are provided by the exempt entity in furtherance of the patient’s care while he/she is receiving care in the hospital or clinic are exempt from ROT because the products are provided in furtherance of

the patient's care. See 86 Ill. Adm. Code 130.2005(a)(2)(a). Again, 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.

"Regarding your second question, if a physician at a nonprofit hospital or clinic which has a valid E-number transfers products incident to service rendered during a patient's appointment, the tangible personal property which the physician transfers incident to a patient's care in the hospital or clinic is exempt from ROT. See 86 Ill. Adm. Code 130.2005(a)(2)(a)."

The exemptions from Retailers' Occupation Tax for sales of drugs, grooming and hygiene products, and tangible personal property made by a nonprofit hospital that qualifies as exclusively charitable and possesses a valid E-number that are explained in ST 15-0023 and ST 15-0066 also apply to hospitals that possess a valid E number pursuant to Section 2-9 of the Retailers' Occupation Tax Act (35 ILCS 120/2-9). These exemptions only apply to an entity that qualifies for the hospital exemption under the provisions of Section 2-9 of the Retailers' Occupation Tax Act and has been issued an E number by the Department. Since COMPANY 1 of CITY, Illinois qualifies for the hospital exemption under the provisions of Section 2-9 of the Retailers' Occupation Tax Act and has been issued an E number by the Department it qualifies for these exemptions. If another entity related to or affiliated with COMPANY 1 of CITY, Illinois wishes to qualify for these exemptions, it must obtain a separate E number from the Department.

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 have further questions related to the Illinois sales tax laws, 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

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