

This letter discusses radiopharmaceuticals and contrast media. 86 Ill. Adm. Code 130.311. (This is a GIL.)

August 6, 2024

NAME  
COMPANY  
EMAIL

Dear NAME:

This letter is in response to your email dated July 22, 2024, 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 <https://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:

Greetings,

My name is NAME, and I’m a tax analyst at COMPANY. I track and maintain taxability setup for various clients. I am currently reviewing the taxability of two radiopharmaceutical products in Illinois, and I have questions regarding their taxability.

The two products and their definitions are:

- **Radiopharmaceuticals and contrast media (Diagnostic Purposes) -** Radiopharmaceuticals and contrast media (Diagnostic Purposes) are radioactive compounds **used for diagnostic purposes**. Contrast media are substances used to enhance the contrast of structures or fluids within the body in medical imaging Prescribed by a licensed physician.

- **Radiopharmaceuticals and contrast media (Therapeutic Purposes) -** Radiopharmaceuticals and contrast media (Therapeutic Purposes) are radioactive compounds **used for therapeutic purposes**. Contrast media are substances used to enhance the contrast of structures or fluids within the body in medical imaging Prescribed by a licensed physician.

Is there a difference in taxability for medical products used for diagnostic vs. therapeutic purposes in Illinois?

Per 35 ILCS 115/3-10 and 86 Ill. Adm. Code 130.311, “qualifying food, drugs, and medical appliances are taxed at a lower rate of 1% than general merchandise which is taxed at 6.25%.” The tax shall also be imposed at the rate of 1% on prescription and nonprescription medicines, drugs, medical appliances, products classified as Class III medical devices by the United States Food and Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices, modifications to a motor vehicle for the purpose of rendering it usable by a person with a disability, and insulin, blood sugar testing materials, syringes, and needles used by human diabetics.

According to 86 Ill. Adm. Code 130.311(c), Medicines and Drugs are 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.

**Could you please confirm whether either of the two products mentioned would qualifies [sic] as a “drug” and are taxable at the reduced sales tax rate? If the products do not fall under the statute mentioned above, could you please point me to the applicable statutory language that would confirm their taxability?**

Thank you and please let me know if you have any further questions!

#### **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 suntan 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.

From the limited information you have provided it appears that radiopharmaceuticals and contrast media used for diagnostic purposes do not have any medicinal qualities and would not qualify for the 1% rate.

You do not describe the therapeutic benefits of radiopharmaceuticals. However, to the extent therapeutic radiopharmaceuticals are intended to cure or treat disease, illness, injury, or pain, or to mitigate the symptoms of such disease, illness, injury, or pain, they would qualify for the 1% rate. The contrast media under these circumstances would not qualify for the low rate.

COMPANY/NAME

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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  
Associate Counsel

RSW:slc