

Physicians are generally subject to the Service Occupation Tax on tangible personal property transferred as an incident to the sale of service. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

May 9, 2006

Dear Xxxxx:

This letter is in response to your letter dated December 22, 2005, 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:

On behalf of the above-referenced taxpayer, we are writing in response to a recent conversation with a representative from the Illinois Department of Revenue (IDOR) Sales Tax Division. They instructed us to write the legal department to discuss our situation. We respectfully request a written acknowledgement that we are in compliance with the IDOR sales tax requirements based on the information below.

We are a physician office that treats patients diagnosed with various types of cancer. As part of our service, we provide medication necessary for the treatment of the patient. We do not bill separately for the medications, it is part of the overall treatment plan.

As outlined by the Illinois Department of Revenue, we are a service provider that includes prescription medication as part of the service. Our cost ratio is less than 75% of our total revenue, so we are not responsible for the Service Occupation Tax and are not required to register with the Illinois Department of Revenue as a serviceperson.

However, our supplier does not collect sales tax on our drug purchases. Accordingly, we self-administer the use tax on the medications used as part of our services. We file and pay the 1.25% use tax to the Illinois Department of Revenue on a monthly basis, including the .25% local tax.

In addition, many of our patients are covered under the governmental Medicare program and are exempt for sales and use tax calculations. We have consistently applied a formula to determine the exempt portion of our drug use for the Medicare recipients.

Based on the above information, please issue a written confirmation that we are in compliance with the IDOR sales tax requirements and are reporting our use tax liability consistent with the IDOR tax code. We can be reached at the number listed below should any questions arise or should you wish to discuss the above matter in detail.

Thank you in advance for your prompt attention and cooperation.

DEPARTMENT'S RESPONSE:

Physicians are primarily engaged in professions that render services. To the extent they are engaged in such professions and are not engaged in the business of selling tangible personal property to purchasers for use or consumption, they are servicemen and are not required to report and remit Retailers' Occupation Tax measured by their receipts from engaging in such professions. This includes receipts from both services and tangible personal property transferred incident to those services. See 86 Ill. Adm. Code 130.2020.

Physicians are generally subject to the Service Occupation Tax, however, on tangible personal property transferred as an incident to the sale of service. See 86 Ill. Adm. Code 140.101. Therefore, when a physician transfers tangible personal property to a patient as a part of the medical treatment rendered to the patient, such as in the case of administering chemotherapy drugs intravenously to cancer patients as a part of their cancer treatment, the physician will be subject to the Service Occupation Tax for that type of transfer, rather than Retailers' Occupation Tax. Please note that if physicians purchase drugs from a pharmaceutical distribution company for resale to patients, separate from a sale of medical service, as in the case of oral antibiotics that the patient will take home and administer himself, for example, the physician is performing a service similar to that of a pharmacist. When that is the case, the physician will also be subject to Service Occupation Tax for that type of transfer, rather than Retailers' Occupation Tax.

The purchase by physicians of tangible personal property that is to be transferred to their patients incident to the sale of service could result in either Service Occupation Tax liability or Use Tax Liability for the physician, depending upon which tax base the physician chooses to calculate his liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the serviceman's entire bill; (3) Service Occupation Tax on his cost price if he is a registered de minimis serviceman; or (4) Use Tax on his cost price if he is an unregistered de minimis serviceman.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sale of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers and remit the tax to the Department by filing returns. They do not pay tax to their suppliers as they provide Certificates of Resale to their suppliers when purchasing the property for transfer to their service customers. See 86 Ill. Adm. Code 140.108.

De minimis servicemen that are not otherwise required to register under Section 2a of the Retailers' Occupation Tax Act may use the final method of determining tax liability. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-state suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction-by-transaction basis. See 86 Ill. Adm. Code 140.109.

You should also be aware that when a physician sells tangible personal property such as medical bracelets, crutches, wheelchairs, first-aid kits and the like for use or consumption apart from their rendering of service as physicians, they incur Retailers' Occupation Tax liability based on the gross receipts from those sales. Physicians selling tangible personal property for use or consumption must be registered as retailers with the Department. See 86 Ill. Adm. Code 130.2020.

Sales made to Medicare and Medicaid are exempt from tax as sales to a government body so long as the exemption is properly documented through provision of an active exemption identification number. See 86 Ill. Adm. Code 130.2080(a). This rule applies to all servicemen. While no tax may be due on payments made directly to vendors by Medicare or Medicaid, tax is due upon any portions of bills paid by individuals or private insurance companies not covered by Medicare and Medicaid. This means when Medicare directly pays 80% of the medical bill and the remaining 20% is billed to the patient or his insurance company, assuming proper documentation of the exemption, the 80% is tax exempt as a governmental payment while the 20% is taxable. Some health care organizations (e.g. hospitals) that make application to the Department are determined to be exclusively organized and operated for charitable purposes. These organizations receive a tax exemption identification number ("E" number). Organizations that have secured tax exemption identification numbers from the Department are exempt from Use Tax when purchasing tangible personal property for use in furtherance of organizational purposes, and retailers do not incur Retailers' Occupation Tax on such sales. See 86 Ill. Adm. Code 130.2005 and 130.2007.

Please note that even tax-exempt hospitals and other exclusively charitable organizations incur sales tax liability on certain sales of tangible personal property. See, for example, 86 Ill. Adm. Code 130.2005(b)(1)(A).

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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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