

This letter provides a reference to the Department's rules regarding the State tax rate applicable to food, drugs, medicines and medical appliances. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

March 20, 2009

Dear Xxxxx:

We apologize for the delay in responding to your letters dated June 16, 2008, December 29, 2008, and February 11, 2009 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 letters you have stated and made inquiry as follows:

I have a client who sells various products to nursing home patients. They do not charge the nursing home for these products. However, they bill the patients directly, and process the billing on the patient's behalf in order to seek Medicare/Medicaid reimbursement to pay for the patients' liability on these products. All items sold to patients are done so under a prescription from a doctor.

We would like for you to opine about the taxability of the following products sold to patients in these facilities under the circumstances described above:

- 1 - Rental of Enteral Feeding Pump
- 2 - Gastrostomy Feeding Tubes and related supplies
- 3 - Nasogastric Feeding Tube
- 4 - Enteral Food Products used in the enteral feeding process
- 5 - Ostomy Supplies

- 6 - Specialty Wound Care Dressings – contains specialized medical applications within the dressings
- 7 - Tracheostomy Tubes
- 8 - Urological Catheters and related supplies
- 9 - Standard Wound Care Products, including sterile dressings

We have viewed numbers 1, 2, 3, 5, 7, and 8 as medical appliances under the law since they are used in directly substituting for a malfunctioning part of the body.

The Enteral Feeding Pump, Gastrostomy Tubes, and Nasogastric Feeding Tubes provide a way for the patient to ingest nourishment, due to the fact that their normal paths for such biological process is malfunctioning.

The Ostomy Supplies provide a way for the patient to expel waste products from the body, due to the fact that their normal paths for such biological process is malfunctioning.

The Tracheostomy Tubes are used for patients unable to cough effectively to clear secretions, and patients with an obstructed or blocked airway.

Urological Catheters are used for patients that are unable to expel urine from the body, due to the fact that their normal paths for such biological process is malfunctioning.

Please do not hesitate to contact me for the need of any further clarification or if you have any questions.

DEPARTMENT'S RESPONSE

Without sufficient detailed information about the products you listed in your letter, such as the manufacturers' label or documentation indicating whether the products were intended by its manufacturers to be for use in directly substituting for a malfunctioning part of the body, the Department is unable to determine at what rate the items are taxable. We can, however, provide you with the following information that we hope you find helpful.

Under the Use Tax Act, a tax is imposed upon the privilege of using in the State of Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. The Use Tax Act imposes a tax of 6.25% on either the selling price or the fair market value, if any, of the tangible personal property, unless otherwise provided by the Act. With respect to prescription and nonprescription medicines, drugs, and medical appliances for human use, the tax is imposed at the rate of 1%. 35 ILCS 105/3-10.

The Retailers' Occupation Tax also imposes a rate of 1% on prescription and nonprescription medicines, drugs and medical appliances for human uses. 35 ILCS 120/2-10. The regulation implementing the 1% rate on foods, drugs, medicines and medical appliances under the Retailers' Occupation Tax provides a guide for determining the applicability of the 1% rate under the Use Tax Act. See 83 Ill. Adm. Code 130.310.

You will note that a medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." A medical appliance is "an item which is **intended by its manufacturer** for use in directly substituting for a malfunctioning part of the body." (Emphasis added.) Diagnostic equipment is generally not deemed to be a medical appliance. Some supplies qualify for the low rate, while others do not. Insulin, urine testing materials, syringes, and needles used in treating diabetes in human beings qualify for the low rate.

You can determine the tax status of the products listed in your letter by applying the principles set forth in the Regulation cited above. You may also want to review some of the letter rulings provided on our website regarding this topic, such as ST 07-0037, ST 03-0159 and ST 9209136.

Please note that the Department has ruled that some catheters can qualify as medical appliances if they directly substitute for a malfunctioning part of the body. Catheters that do not directly substitute for a malfunctioning part of the body, such as catheters that are used as part of a drug delivery system, do not qualify for the low rate and are fully taxable.

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,

Debra M. Boggess
Associate Counsel

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