

Medicines and medical appliances are not taxed at the general State rate of 6.25%. These items are taxed at a lower State rate of 1%. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

March 20, 2009

Dear Xxxxx:

This letter is in response to your letter dated February 11, 2008, 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.

In your letter you have stated and made inquiry as follows:

ABC is in the business of selling medical devices. Because of the complex tax laws on medical appliances, ABC is requesting a Private Letter Ruling in accordance with 2 Ill. Adm. Code 1200.110 concerning the 1% sales tax rate in Illinois on the products described below (literature enclosed).

These products are sold with the 'Caution: Federal (U.S.A) law restricts this device to sale by or on the order of a physician (or properly licensed practitioner)' statement on the preprinted label upon distribution.

Currently, ABC treats the following products as taxable at the normal rate of tax plus applicable local taxes due to the reasons articulated below and because it is understood that the Department strictly interprets the language 'directly substituting for a malfunctioning body part'.¹ However, the Department has issued Private Letter Rulings on products similar to some of those discussed below that concluded the similar products were medical appliances. ABC understands that it cannot rely on those Private Letter Ruling as they were issued to a specific taxpayer. However, we have recently had inquiries from our customers questioning why these products do not qualify as medical appliances subject to the 1% rate plus applicable local taxes.

1. Dialysis Products. These products include catheters, dilators, wire guides, connecting tubes, needles, scalpels, and sutures, and are usually sold in a set. See the data sheet for further information on the contents of the set. ABC reasons that this is a product taxable at the normal rate of tax as more than half the value of the products included in the kit are not specifically mentioned in 86

II.Adm.Code 130.310(d) which states that insulin, urine testing materials, syringes, and needles used in treating diabetes in human beings qualify for the reduced rate of tax. When products are sold in a kit, the Department will consider the selling price of the entire kit to be taxable at the reduced rate when the value of the medicines in the kit is more than half of the total selling price of the kit.²

2. Anal Fistula Plug. The Anal Fistula Plug is a cone shape medical device that is placed into a fistula tract to permanently close painful, debilitating anal fistulas. A fistula is an abnormal channel that develops between body organs. Once in place, the device serves as a bio-scaffold, signaling new, fully vascularized tissue to grow over and close the fistula. ABC reasons that this is a product taxable at the normal rate of tax as it is treating a patient, but is not directly substituting for a malfunctioning part of the body. The argument being advanced by customers and their consultants is that the human body is malfunctioning because an abnormal opening has developed and the Anal Fistula Plug is substituting for the malfunctioning part of the body that has allowed the fistula to develop.
3. Soft Tissue Graft. This graft is implanted to reinforce soft tissue where weakness exists, including repair of hernias. This graft communicates with the body, signaling surrounding tissue to grow across the graft scaffold, allowing the body to heal itself. ABC considers this product taxable at the normal rate of tax as it is treating a patient by reinforcing weak areas, but is not directly substituting for a malfunctioning part of the body. The argument being advanced by customers and their consultants is that the human body is malfunctioning because the tissue has become weak and that the soft tissue graft is substituting for the malfunctioning part of the body by supporting the weakened tissue.
4. Endovascular Graft. This stent graft is inserted into an artery to strengthen the artery wall, which could otherwise burst causing internal bleeding and possible death. The graft is permanently implanted. ABC has determined that this is a product taxable at the normal rate of tax as it treats a patient by reinforcing weak areas in the artery, but is not directly substituting for a malfunctioning part of the body. The argument being advanced by customers and their consultants is that the product supports the weakened artery wall, the malfunctioning portion of the body, which would otherwise burst and not be able to properly deliver the blood when it is needed. In addition, in Private Letter Ruling ST 91-0670, the Department ruled that a coronary stent would be considered a medical appliance as it is 'left in the vein to replace or reinforce a weak portion of the vein'. The coronary stent and endovascular graft serve similar purposes, but are located in different parts of the body.
5. Ureteral Stent. The Ureteral Stent is used to internally drain the urine from the ureteropelvic junction to the bladder. It assists the ureter in maintaining patency and drainage and it also aids the physician in gaining access. ABC reasons that this is a product taxable at the normal rate of tax as it is helping the body perform its function by treating the diseased area, but is not directly substituting for a malfunctioning part of the body. The argument being advanced by customers and their consultants is that the stent is replacing a malfunctioning part of the body by allowing urine to drain properly.
6. Peripheral Artery Stent. This device is inserted to prop open a blocked artery outside of the heart. ABC reasons that this is a product taxable at the normal rate

of tax as it is treating a patient, but is not directly substituting for a malfunctioning part of the body. The argument being advanced by customers and their consultants is that because the artery delivers the blood to the body and is not able to do so because of blockage, the stent replaces a function of the body by keeping the artery propped open to allow the blood to flow through. In addition, in Private Letter Ruling ST 91-0670, the Department ruled that a coronary stent would be considered a medical appliance as it is 'left in the vein to replace or reinforce a weak portion of the vein'. The coronary stent and the peripheral artery stent serve similar purposes, but are located in different parts of the body.

The Department has not previously ruled on the same or a similar issue for ABC, or a predecessor of ABC, nor has ABC, or a predecessor to ABC, previously submitted a ruling request on the same or a similar issue and withdrawn it before a letter ruling was issued. In addition, ABC is not currently under audit by the Department nor is it in litigation with the Department.

Although currently, ABC operates under the rationale that the previously discussed products are taxable at the normal rate, ABC finds the customers' rationale for taxing the aforementioned products at the 1% rate plus applicable local taxes compelling. Thus, ABC respectfully requests a Private Letter Ruling on this issue.

If the Department requires any additional information or has any questions on this request for Private Letter Ruling, please contact #.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4).

After reviewing your request, the Private Letter Ruling Committee has determined that it lacks sufficient detailed information to determine the taxability of the items listed in your letter which is necessary in order to issue a PLR. As a result, the PLR Committee declines to issue a PLR and issue this GIL instead.

For useful information regarding the taxation of food, drugs, medicines and medical appliances, I refer you to the Department's regulation at 86 Ill. Adm. Code 130.310. Products that qualify as medicines, drugs, or medical appliances under the regulation are taxed at the reduced State rate of 1% plus applicable local taxes. Those that do not qualify for the low rate are taxed at the State rate of 6.25%, plus applicable local taxes.

The definition of a medical appliance is "an item which is **intended by its manufacturer** for use in directly substituting for a malfunctioning part of the human body." (Emphasis added.) Generally, medical tools, devices and equipment for diagnostic, rehabilitative and treatment purposes do not qualify for the reduced rate of tax as medical appliances because such items, while being used for the treatment of patients, are not "intended by its manufacturers for use in directly substituting for a malfunctioning part of the body," 86 Ill. Adm. Code 130.310. Examples of items that qualify for the low rate are crutches, wheelchairs and walkers. Generally, these items directly replace a malfunctioning part of the body.

Items such as dialysis machines (including the dialyzer), concentrates and fluids, needles and syringes used in dialysis treatment, however, generally qualify for the low rate of tax. Please note that items such as needles and syringes generally only qualify when used in dialysis treatment or when used by diabetics. See 86 Ill. Adm. Code 130.310(c)(2). If they are utilized for other purposes, they generally do not qualify for the low rate of tax.

Further, the Department has determined that if a prepackaged kit is made up of some items that qualify for the lower tax rate and if over 50% of the value of the kit is derived from these low-rate items, then the entire kit is taxable at the low rate. See 86 Ill. Adm. Code 130.310(c)(2).

For additional information to help you determine the tax status of the products listed in your letter, you can review previous letter rulings the Department has issued on this topic which can be found on the Department's website.

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

DMB:msk

¹ 86 Ill. Adm. Code 130.310(c)(2).

² Id.