

A medical appliance is defined as an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See 86 Ill. Adm. Code 130.310(c). (This is a GIL.)

September 30, 2009

Dear Xxxxx:

This letter is in response to your letter dated March 20, 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 letter you have stated and made inquiry as follows:

I am contacting you on behalf of the owners of BUSINESS. Our company provides durable medical equipment and also does home modifications for the disabled.

Last year our company, formerly BUSINESS was audited by the Illinois Department of Revenue. At the time, we verified the sales and use tax laws and how they apply to our company. Now, under new ownership, I have a few more specific questions regarding these taxes. I have tried contacting the auditor with no success. I am assuming because we are now under new ownership, he is no longer responsible for our account.

First, I wanted to clarify if a hydraulic freestanding lift would qualify for the reduced sales tax rate of 1%. I have included a brochure lest you are not familiar with this type of equipment.

Additionally, we are not clear if a vehicle modification, more specifically a vehicle lift for a scooter or wheelchair, would qualify for a use tax (our company liable for 6.25% of cost) or sales tax (client liable for 7.25% of retail). I have included a brochure for this equipment as well.

I have read through the regulations and guidelines available on your website, however, they are not specific enough for me to determine the above circumstances. Please let

me know how I am to handle these two cases. Also, if there is any documentation that specifically notes these situations I would appreciate a copy.

Thank you for your time.

DEPARTMENT'S RESPONSE:

Although your inquiry indicates that you attached brochures for the items discussed, no brochures were included with the letter. We would, however, like to address the issues you raise.

Hydraulic Freestanding Lift:

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal rate of 6.25% plus applicable local taxes. These items are taxed at a reduced rate of 1% plus applicable local taxes. See 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use.

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 body." "Medical appliances" may be prescribed by licensed health care professionals for use by a patient, purchased by health care professionals for the use of patients, or purchased directly by individuals. See 86 Ill. Adm. Code 130.310(c)(2). Please note that not all items prescribed by or used by physicians or other licensed health care professionals qualify for the low rate.

Medical appliances that qualify for the reduced rate include such items as artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines. Other examples of items that qualify for the reduced rate are corrective medical appliances such as hearing aids, eyeglasses and contact lenses. As a general proposition, diagnostic, treatment, and rehabilitative equipment items do not qualify for the reduced rate of tax as medical appliances because such items are not "for use in directly substituting for a malfunctioning part of the body," 86 Ill. Adm. Code 130.310(c)(2).

A hydraulic freestanding lift is a device which, while it may be used to assist a person with physical disabilities, does not directly substitute for a malfunctioning part of the body. These types of items do not fall within the definition of medical appliance and are, therefore, taxed at the state sales tax rate of 6.25% plus any applicable local taxes.

Vehicle Lift for Scooter or Wheelchair:

A business that installs vehicle lifts on customers' vehicles to haul unoccupied equipment, such as a scooter or a wheelchair, is acting as a serviceman under the Service Occupation Tax Act. How to calculate the tax liability of such a business depends on the analysis that follows. If tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon their activities. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (*i.e.* servicemen) are taxed on tangible personal property they transfer as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase by the servicemen of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon their activities. The servicemen's liability may be calculated in one of four ways:

- (1) Service Occupation Tax on the separately stated selling price of tangible personal property transferred incident to service;
- (2) Service Occupation Tax on 50% of the servicemen's entire bill;
- (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or
- (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately-stated selling price of the tangible personal property transferred. Under the second method, if the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of these methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. 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. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. These servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

Whether a business that installs vehicle lifts to haul unoccupied equipment, such as a scooter or a wheelchair, pays Service Occupation Tax or Use Tax depends on the analysis above.

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.

Sincerely,

Samuel J. Moore
Associate Counsel