

Assistive devices, such as telephone and television amplifiers, smoke alarms, or alarm clock signalers etc., do not directly substitute for a malfunctioning part of the body and therefore do not qualify for the low rate of tax as medical appliances. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

March 21, 2008

Dear Xxxxx:

This letter is in response to your letter dated March 22, 2007, 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:

We hereby request a response regarding the application of sales and use tax to sales of electronic communication devices used by persons with speech or learning disabilities.

The products in question are divided into three categories:

Touch screen portable device that allow users to select the words or phrases to say from a series of icons on the screen, which are then played audibly from the device.

Keyboard devices, which allow users with some literacy skills and motor function to generate electronic speech by typing words that are then played audibly from the device.

Small portable handheld devices that play-prerecorded phrases from a brief list displayed on the device.

The above listed products make it possible for individuals *challenged by significant speech, language, learning and physical disabilities* to communicate. Generally, these

products are not sold pursuant to a doctor's prescription when payment is received directly from the customer. However, when payment is received through funding from Medicaid, Medicare or an insurance company, a doctor's prescription is required as part of the pre-sale authorization process.

These products replace the bodily function of speech for a person, therefore could qualify for exemption from sales and use tax. We request your opinion as to the application of tax in your jurisdiction to each of the products listed above. Also, would your opinion be different if the cost of the device was paid for directly by Federal Medicare or State Medicaid assistance.

Your prompt response would be greatly appreciated. Please call us with any questions.

DEPARTMENT'S RESPONSE

For useful information regarding the taxation of food, drugs, medicines and medical appliances, we refer you to the Department's regulation at 86 Ill. Adm. Code 130.310. Those products that qualify as medicines, drugs, or medical appliances are taxed at the reduced tax 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 body." Please note that 86 Ill. Adm. Code 130.310(c)(2) provides that 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. In addition, not all items prescribed by physicians or other licensed health care professionals qualify for the low rate. A medicine or drug is defined at Section 130.310(c)(1) as "any pill, powder, potion, salves, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities."

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." See 86 Ill. Adm. Code 130.310(c)(2).

You can generally determine the tax status of medical devices by applying the principles set forth in the regulation. Please note that assistive devices, such as telephone and television amplifiers, smoke alarms, or alarm clock signalers etc., do not directly substitute for a malfunctioning part of the body and therefore do not qualify for the low rate of tax as medical appliances. The electronic devices described in your letter appear to be the type of assistive devices that do not qualify for the low rate of tax as medical appliances.

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, Medicaid, or the Illinois Department of Healthcare and Family Services, tax is due upon any portions of bills paid by individuals or private insurance companies not covered by Medicare, Medicaid, or the Illinois Department of Healthcare and Family Services. This means, for example, 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. 86 Ill. Adm. Code 130.2005 and 130.2007.

It is important to note that payments will only be exempt from tax when they are paid **directly** by the government agency. It is not enough that a payment to the vendor is made by a patient or insurance company and reimbursed by the government agency.

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,

Terry D. Charlton
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TDC:msk