

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

January 12, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 15, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to TAXPAYER for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither TAXPAYER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

I respectfully request a Private Letter Ruling ('PLR') in accordance with 2 Ill. Adm. Code 1200.110 on behalf of TAXPAYER with regard to the Illinois sales/use tax treatment of an item which it sells to customers in Illinois. I have provided the facts below to assist the Department of Revenue (hereinafter 'Department') in making its determination.

Facts

Taxpayer is a company which manufactures and distributes a topical powder (hereinafter 'QR Powder' or 'Powder') which stops bleeding when it comes in contact with a bleeding wound. Taxpayer manufactures this product at its sole location in STATE. All distribution is done from STATE via common carrier to customers located in Illinois. A sales representative is employed in Illinois which gives the Taxpayer requisite sales and use tax nexus in the State.

The Powder is a non-prescription 'powder bandage.' The U.S. Food and Drug Administration ('FDA') classifies the Powder as a wound dressing, in the same category as bandages and gauze. The Powder's main components are potassium iron oxyacid salt, and a hydrophilic polymer. Upon contact with blood or exudate, the Powder forms an instant seal that protects a wound against infection and contamination, and allows the body's own mechanism to begin healing. The protective seal stays on the wound until it is healed then falls off naturally. The Powder is marketed with the following terms on its packaging 'Stops Bleeding Instantly,' 'For Minor External Bleeding from Wounds and Procedures,' and 'For More Moderate to Severe External Bleeding Wounds.'ⁱ

The Powder is sold predominantly to the following primary markets: Consumer-Retail and Healthcare Providers. Most of the primary market customers purchase the Powder either for resale to the ultimate consumer (Consumer-Retail Market), or for use in their own practice to be administered to their patients (Healthcare Providers). The Powder is used by leading hospitals as well as professional sport teams and major universities. Additionally, the Powder is being used in tens of thousands of occupational workplaces across the country as a component of their first aid kits.

The Taxpayer has recently expanded its customer base to include the sale of its Powder directly to the ultimate consumer(s), who are able to order the Powder by calling Taxpayer's toll-free number.

The Taxpayer is not currently undergoing an audit from the Department regarding this matter. To the best of our knowledge and Taxpayer's knowledge, the Department has not previously ruled on this issue in a PLR. The Department has issued General information Letters ('GILs') which address fact patterns where the taxpayer requests guidance on the Illinois sales and use taxability of several medical items including wound care dressings and other types of bandages.ⁱⁱ However, GILs are not binding on the Department, and the facts enumerated in these GILs differ slightly from the facts stated above. Thus, Taxpayer is requesting a PLR in accordance with Illinois law.

Question

Does the Powder sold by the Taxpayer as direct retail sales to Illinois customers through its toll-free number qualify for the Illinois reduced tax rate of 1% on 'medicines and medical appliances' as defined under 86 Ill. Adm. Code 130.310?

Applicable Illinois Law

Under the Use Tax Act, a tax is imposed upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer.ⁱⁱⁱ 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%.^{iv}

The Retailers' Occupation Tax also imposes a rate of 1% on prescription and nonprescription medicines, drugs and medical appliances for human uses.^v The regulation implementing the 1% rate on food, 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.^{vi}

Under 86 Ill. Adm. Code 130.310(c) a 'medicine or drug' is any pill, powder, potion, salve, or other preparation for human use that purports on the label to have medicinal qualities. A written claim on the label that a product is intended to cure or treat disease, illness, injury or pain, or to mitigate the symptoms of such disease, illness, injury or pain constitutes a medical claim.^{vii} Additionally, 86 Ill. Adm. Code 130.310(c) sets out examples of medical claims that will qualify a product for the lower rate of tax. Examples of such terms include: 'heal,' 'cure,' 'relief,' and 'fights infection.' In accordance with 86 Ill. Adm. Code 130.310(c) these terms are provided as examples, and do not constitute an exhaustive list. Moreover, 86 Ill. Adm. Code 130.310(c)(B)(ii) states that a claim that a product is for use as an antiseptic to kill germs to prevent infection in cuts, scrapes, abrasions and burns also constitutes a medicinal claim.

Additionally, in ST 07-0160 GIL (12/31/2007), the Department addressed the taxability of a type of item that is similar to the Powder sold by the Taxpayer. This GIL was concerned with the taxability of a 'D-Stat Dry Hemostatic Bandage' which is a dry hemostatic gauze pad with an adhesive bandage that quickly clots blood. Its intended use is for a variety of topical bleeding situations to stop the bleeding quickly in a single, no-mixing, open-and apply configuration.

'D-Stat Dry' consists of two components: a gauze pad that consists of primarily thrombin and 'D-Stat' lyophilized (freeze-dried) into the pad, and a custom-sized adhesive bandage to go over the pad. This item is a disposable, single use product. Federal law restricts this device to sale by or on the order of a physician. The GIL stated that it was the Department's belief that a hemostatic bandage may qualify for the reduced rate. However, no definitive position was taken by the Department on this particular issue because the advice was provided in a GIL, and further information was necessary.

Issues to Consider

The function of the Powder produced by the Taxpayer is like that of other wound care dressing products. The Powder is marketed as a more efficient and effective method of controlling bleeding, and is generally placed in the same area of retail locations as bandages, gauze, band aids, and first aid kits. The Powder is used in Taxpayer's various markets for the purpose of dressing wounds and to stop bleeding instantly in a hygienic and effective manner. The Powder's chemical composition is such that it allows it to adhere to wound tissue to form a 'scab' that stops bleeding and protects the wound, usually eliminating the need for an adhesive bandage.

It is for these reasons that Taxpayer markets the Powder with such terms as 'Stops Bleeding Instantly' and 'For Minor External Bleeding from Wounds and Procedures,' as well as 'For Moderate to Severe External Bleeding Wounds' depending on what market it is sold in. These medical claims seem analogous to those enumerated in 86 Ill. Adm. Code 130.310(c) as medical claims which will allow an item to be taxed at the 1% rate as a medicine or drug. Additionally, the Department has previously opined on the taxability of a similar type of wound care dressing, and has stated that it is likely subject to the reduced tax rate under Illinois sales and use tax law.

Conclusion

The Powder manufactured and distributed by the Taxpayer is specifically designed and marketed to hygienically dress wounds and stop bleeding. As such, Taxpayer believes

that of [sic] the Powder should be classified as a 'medicine or drug' under Illinois sales and use tax law, and subject to the 1% tax rate rather than the 6.25%.

I appreciate in advance your prompt attention to this request. If you need additional information or have any questions, please contact me.

DEPARTMENT'S RESPONSE:

Please see the Department's regulation at 86 Ill. Adm. Code Section 130.310, which are its regulations governing Food, Drugs, Medicines and Medical Appliances. Those products that qualify as food, drugs, medicines and medical appliances are taxed at a lower State rate of 1% plus any applicable local taxes. Those items that do not qualify for the low rate of tax are taxed at the general merchandise rate of 6.25% plus applicable local taxes.

A medicine or drug is any pill, powder, potion, salve, or other preparation for human use that purports on the label to have medicinal qualities. A written claim on the label that a product is intended to cure or treat disease, illness, injury or pain, or to mitigate the symptoms of such disease, illness, injury or pain constitutes a medicinal claim. See Section 130.310 for examples of medicinal claims. Beginning on September 1, 2009, the term "nonprescription medicines and drugs" does not include grooming and hygiene products. Grooming and hygiene products include, but are not limited to, soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, unless those products are available by prescription only. If an item is a nonprescription grooming and hygiene product, it will be taxed at the State 6.25% general merchandise rate regardless of any medicinal claims made on the product's label.

A medical appliance is an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the human body. Included in the exemption as medical appliances are such items as artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines (including the dialyzer). Corrective medical appliances such as hearing aids, eyeglasses and contact lenses qualify for exemption.

Based upon the representations made in your letter, we believe the QR Powder qualifies for the 1% State rate of tax plus any applicable local taxes.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

TDC:DMB:msk

ⁱ More information regarding this product can be found at #.

ⁱⁱ *See* ST-09-0041-GIL (03/20/2009); ST 08-0071-GIL (04/29/2008); ST 07-0160 GIL (12/31/07).

ⁱⁱⁱ *See* 35 ILCS 105/3.

^{iv} *See* 35 ILCS 105/3-10.

^v *See* 35 ILCS 120/2-10.

^{vi} *See* 83 [sic] Ill. Adm. Code 130.310.

^{vii} *See* 83 [sic] Ill. Adm. Code 130.310(c)(1).