

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 130.311(d). (This is a GIL.)

October 12, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 30, 2010, 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:

COMPANY is a durable medical equipment provider and manufacturer of subcutaneous insulin infusion pumps with related disposable supplies for individuals with diabetes. The insulin pump is a reusable device that administers insulin therapy dosages predefined by a physician. The related disposable supplies consist of sterile plastic cartridges and infusion sets that are each designed for one single use only. The cartridges hold insulin in the pump and the infusion sets deliver the insulin via tubing from the pump directly to the individual wearing the device.

Prior to distribution of any equipment or supplies from our facility located in CITY/STATE, all of our products must be prescribed under the care of a licensed physician. Our business is mail order to consumer and we are trying to understand what obligation COMPANY must have regarding the collection of the standard Illinois sales tax from our consumers that reside in your state. Since this is medical equipment for the treatment of diabetes and prescribed only by a licensed physician, our understanding is this equipment would be exempt from your state's sales tax when shipped to a consumer located in Illinois.

Please reply with an informal letter ruling explaining what obligation COMPANY must have regarding the collection of the standard Illinois sales tax from our consumers that reside in your state. Please mail your reply to:

[Name and address]

If you require additional information, please feel free to reach out to me directly via phone or email.

DEPARTMENT'S RESPONSE:

Although we cannot give you a specific answer in the form of a General Information Letter, we hope you find the following helpful. For useful information regarding the taxation of drugs, medicines and medical appliances, I refer you to the Department's regulation at 86 Ill. Adm. Code 130.311 which can be accessed on the Department's website. In addition, you may want to review letters that the Department has previously issued regarding medical appliances which can be found on the Department's website, for example ST 10-0041-GIL and ST 08-0145-GIL.

Those products that qualify as 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 130.311 for examples of medicinal claims. As of 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.

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 130.311(d).

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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