

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. (This is a GIL.)

December 27, 2012

Dear:

This letter is in response to your letters dated August 23, 2012, and October 31, 2012, 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 letters you have stated and made inquiry as follows:

Our Company is engaged in the manufacture and distribution of cardiovascular blood management products such as chest drains used after open-heart surgery, thoracic catheters, auto-transfusion devices, synthetic artery products as well as STENTS. From time to time we may sell our products to for-profit and/or not-for-profit healthcare organizations within your state. We are sending this letter in an effort to determine the state sales tax laws governing our products in each of the may states our Company operates in.

For your convenience, our website X, is available to help identify the products that we manufacture. The products are listed by product line with a complete description. This information should assist you in answering any questions your state's tax regulation representative may have regarding the taxability of products for your State.

Please complete the attached form with your state, phone and contact information and return it along with this letter to COMPANY, at your earliest convenience either by fax XX), scanned email – PDF format to XXX or postal mail to the following address: XXXX

Please feel free [sic] contact me if you have any questions at XXXXX.

DEPARTMENT'S RESPONSE:

Please see the Department's regulation at 86 Ill. Adm. Code Section 130.311, which is its regulations governing Drugs, Medicines, Medical Appliances, and Grooming and Hygiene Products. 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.

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 130.311(d)(7) 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. Note, though, not all items prescribed by physicians or other licensed health care professionals qualify for the low rate. 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, even if prescribed by a licensed health care professional, because such items are not "for use in directly substituting for a malfunctioning part of the body," 86 Ill. Adm. Code 130.311(d).

You can determine the tax status of the products listed in the attachment to your letter by applying the principles set forth in the Regulation cited above. You may also want to review some of the letter rulings provided on our website regarding this topic.

Further, for your information, the Department has ruled that some catheters can qualify as medical appliances. Catheters that directly substitute for a malfunctioning part of the body, that is, catheters that introduce fluids into the body (for instance, catheters used to pump blood back into the circulatory system in open heart surgery or in hemodialysis, or enteral catheters) or remove fluids from the body (urological or drainage catheters, or neurological catheters relieving intracranial pressure in hydrocephalics) are subject to the low rate of tax.

Catheters that are used diagnostically (e.g., interventional angioplastic catheters) or as medical tools (e.g., as part of a drug delivery system) do not qualify for the low rate and are fully taxable.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101.

Organizations that are recognized as non-profit under Internal Revenue Code Section 501(c)(3), are not necessarily exempt organizations pursuant to Illinois tax law. Such organizations must obtain an exemption identification number (an "E number") to qualify. See 86 Ill. Adm. Code 130.2007. Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an E number. The E number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that currently only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

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.

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Very truly yours,

Debra M. Boggess
Associate Counsel