

A medical appliance is an item that directly substitutes for a malfunctioning part of the human body. Products that qualify as medical appliances are taxed at a lower State rate of 1% plus any applicable local taxes. See 86 Ill. Adm. Code 130.311. (This is a PLR).

March 2, 2017

**Re: Private Letter Ruling Request
Illinois Retailers Occupation Tax
COMPANY
ADDRESS
FEIN: ###
Phone: ###**

Dear Xxxxx:

This letter is in response to your letter dated January 23, 2017, in which you requested 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 COMPANY, 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 COMPANY, 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:

Please consider this request for a private letter ruling for our client COMPANY (“COMPANY”). This request is in regards to the provision that addresses medical devices and supplies. The issue as to the taxability of the product in question by COMPANY is not under consideration by the Illinois Department of Revenue in any audit, refund request, hearing, voluntary disclosure, or litigation regarding COMPANY or any related party.

Statement of Facts

COMPANY is the provider of a device referred to as the DEVICE. The DEVICE is a device that physicians prescribe to increase the size of the upper airway by advancing the mandible, to support and correct snoring and obstructive sleep apnea, also known as Continuous Open Airway Therapy. The device keeps the airway open by moving the jaw slightly forward in order to prevent abnormal breathing since the soft tissues have collapsed. It is a temporary device, meaning that while it is worn it supports and corrects the problem/issue. The DEVICE is not used to diagnose or monitor sleep apnea.

The DEVICE is prescribed by a physician. A patient will subsequently go see a dentist and the dentist will make a custom fit device with the help of an impression of the human mouth for that particular patient. The device uses the teeth and the facial structure to support the movement of the jaw thus allowing the airway to stay open. Each device is custom fit for the patient by the dentist in accordance with a prescription.

Issue to be Resolved

Is the DEVICE sold by COMPANY considered to be a medical appliance that is used as a substitute for a malfunctioning part of the body, as defined by Illinois Law and, as such, qualifies for the low tax rate under the retailers' occupation tax?

Requested Ruling

The DEVICE is considered a medical device that is used exclusively to correct a medically diagnosed condition, known as sleep apnea. Consequently, this qualifies the device for the low tax rate of the retailers' occupation tax under Illinois Law.

In Support of Requested Ruling

Illinois Administrative Code Title 86, §130.311(d) defines what a medical appliance is, and qualifies these items for the low tax rate. The DEVICE is a medical device that is prescribed to a patient to correct a medically diagnosed condition referred to as sleep apnea. Its function is to correct the collapsing airway which causes sleep apnea by keeping the air way open while a patient is sleeping by using the facial structure combined with the device to move the jaw.

The DEVICE clearly meets the definition of a medical appliance used to correct a medically diagnosed condition, under Ill. Admin Code tit. 86 §130.311(d)(2). Section 130.311(d)2 applies the low tax rate to other temporary corrective devices, such as eyeglasses and hearing aids. In the same manner as the listed devices, the DEVICE corrects a malfunction of the body. In the case of the DEVICE, the malfunction is the collapsing of a person's airway causing a reduction in the user's ability to breath, rather than the reduced ability to hear or see. Given these conclusions, the DEVICE would qualify for the low tax rate under Illinois Law. Therefore, we respectfully request for the Department to concur with our determination.

If you need additional information or have any questions, please contact me.

DEPARTMENT'S RESPONSE:

The Department's regulation at 86 Ill. Adm. Code Section 130.311 governs Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products. 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 medical appliance is an item that is used to directly substitute 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. Moreover, generally, home glucose monitors, test strips and related supplies used to treat human diabetes also qualify for the 1% State rate of tax. See subsection (d) of 86 Ill. Adm. Code 130.311.

Based upon the information contained in your letter, as well as the description of the way DEVICE works, it is the Department's position that DEVICE qualifies as a medical appliance and should be taxed at the lower State rate of 1% 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 (217) 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,

Richard S. Wolters
Chairman, Private Letter Ruling Committee