

ST 17-0034-GIL 10/03/2017 MEDICAL APPLIANCES

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 GIL).

October 3, 2017

Dear Xxxxx:

This letter is in response to your letter dated August 22, 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.

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 are writing to request a Private Letter Ruling from the Illinois Department of Revenue (“Department”) regarding the application of the Retailer’s Occupation Tax (“ROT”) to the following specific products that will be sold in a near future to customers in Illinois by a Canadian corporation, COMPANY. (“COMPANY”), who has its head office located at ADDRESS.

COMPANY is a manufacturer of dental products custom made under prescription by health professionals.

We confirm that an audit or litigation is not pending regarding that taxpayer and that, to the best of our knowledge, the Department has not previously ruled on a similar issue for the taxpayer nor has it already filed for such a ruling.

1. THE PRODUCTS SOLD IN THE NEAR FUTURE

The first product sold by COMPANY is a FDA regulated anti-snoring and sleep apnea device qualified as a therapeutic dental device by the FDA (“Anti-snoring device”). This product is patient specific manufactured in Canada under prescription from a health professional (dentist) and is an intraoral mandibular advancement device designed to alleviate or eliminate or treat snoring and sleep apnea. The device is custom made using oral scans and dentist’s specifications on filled-out and signed prescriptions.

This device is sold to dental clinics who sell the device to their patients or to dental laboratories who sell the device to their dental customers.

The label of the product does not specify that the product is to be dispensed only by prescription but in reality, without a prescription, the product cannot be manufactured and sold.

The second product sold by COMPANY is a FDA regulated metal dental bar qualified as a prosthetic dental device by the FDA. This product is patient specific manufactured in Canada under prescription from a health professional (dentist) and is a dental bar that is screwed into dental implants already placed in mouth of edentulous patients. The customers (dental laboratories and denturists) finish a full denture over the dental bar before it is sent to dentists for fixation in mouth. The product is custom made using oral scans and dentist's specifications on filled-out and signed prescriptions.

The product is sold to dental laboratories and denturists who incorporate the product in a denture sold to dentist, once finished, for fixation in patient's mouth.

The label of the product does not specify that the product is to be dispensed only by prescription but in reality, without a prescription, the product cannot be manufactured and sold.

2. ARGUMENTS IN FAVOR OF THE 1% ROT RATE

We are of the opinion that the Anti-snoring device is a medical appliance taxed at a 1% rate in accordance with Section 130.311 of Part 130 of Title 86 of the Illinois Department of Revenue Regulations. On the label of the product it is stated "anti-snoring device". This device is intended to correct a malfunctioning body part (mouth) that causes snoring or sleep apnea.

We consider this device to be a dental prosthetics as it is inserted and removed from the patient's mouth. We also consider that it is a corrective medical appliance since its function is to correct the mouth of a patient who has a medical condition, either snoring or sleep apnea.

Finally, as stated in Ruling St 16-0051-GIL, dentures generally qualify for the 1% tax rate. Therefore, a mouth piece device such as the one described should also qualify.

We have no arguments for the application of the 1% tax rate to the metal dental bar.

3. ARGUMENTS IN FAVOR OF THE 6.25% ROT RATE

Notwithstanding the above, we ignore if snoring is considered as a medical condition or disease for the Illinois ROT. We also ignore if a removable device as the one described can be considered as substituting for a body part, as dentures are for teeth.

There, we are not sure if the 1% tax rate stated above applies or not to the Anti-snoring device.

As for the metal dental bar, we do not think it qualifies for the 1% tax rate.

We are requesting that the Department confirm the Anti-snoring devices is taxable at a 1% rate when sold to clients, under Section 130.311 of Part 130. of Title 86 of the Illinois Department of Revenue Regulations.

Even though the 1% tax rate applies, we are of the opinion that the Anti-snoring devices and the meal bars are purchased for resale by servicemen (dentist, dental laboratories and denturists) as stated in Ruling St 16-0051-GIL, and that a resale certificate needs to be obtain[sic] from the clients (servicemen) to avoid charging the ROT. We would like a confirmation on that matter.

If you have any questions regarding this request or would like additional information, please contact us.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope, however, the following General Information Letter will be helpful in addressing your questions.

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. See 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. See 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

Retailers' Occupation Tax and Use Tax do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services (*i.e.*, servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon his activities. The serviceman's liability may be calculated in one of four ways:

- (1) separately-stated selling price of tangible personal property transferred incident to service;
- (2) 50% of the serviceman's entire bill;

- (3) Service Occupation Tax on the serviceman's cost price if the serviceman is a registered de minimis serviceman; or
- (4) Use Tax on the serviceman's cost price if the serviceman is de minimis and is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred incident to service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the serviceman's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106. These methods result in the customer incurring a Service Use Tax liability. See 86 Ill. Adm. Code 160.101. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of sales of service.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred incident to the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen do not have the option of determining whether they are de minimis using a transaction-by-transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give their suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. This method also results in the customer incurring a Service Use Tax liability.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108. Under this method the customer incurs no Service Use Tax liability. However, they generally either seek reimbursement of the tax from their customers or build the tax into their prices.

Prescription and non-prescription medicines, drugs and medical appliances, for human use, are not exempt from tax. A tax is imposed on these items at the rate of 1%. 35 ILCS 120/2-10; 86 Ill. Adm. Code 130.310(a). A medical appliance is an item that is used to directly substitute for a malfunctioning part of the human body. These items 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. 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 eyeglasses and contact lenses qualify for the low rate of tax. See 86 Ill. Adm. Code 130.310(c)(2). These rules apply to retailers as well as servicemen. See 35 ILCS 115/3-10; 86 Ill. Adm. Code 140.126. The products described in your letter would generally qualify as medical appliances.

When dentists or dental laboratories render service, they are not subject to Retailers' Occupation Tax liability. They are, however, subject to liability under the Service Occupation Tax Act to the extent they transfer tangible personal property incident to their rendering of service. Servicemen incur tax liability in these transactions under one of the four methods described above.

With respect to transactions involving the first product you described wherein dentists purchase that product from the manufacturer directly and then sell the product to their patients, the dentists may purchase the product with a resale certificate and pay Service Occupation Tax at the 1% rate under the first or second methods described earlier (see Section 140.106). If the dentists are below the 35% threshold and are otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act, they may pay Service Occupation Tax at the 1% rate on their cost price as described in Section 140.109. If the dentists are below the threshold and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act, they can pay Use Tax to their suppliers on their cost price as explained in Section 140.108. No resale certificates are allowed.

With respect to transactions involving the second product, you appear to be describing a multi-service situation. When a serviceman (e.g., a dentist) contracts out all or a portion of the service that he will provide, he is acting as a primary serviceman in a multi-service situation. As a primary serviceman (dentist), he engages the services of a secondary serviceman (laboratory or denturist) in order to obtain all or part of the product and services desired by the service customer (patient). Whether the primary and secondary servicemen are registered or not or de minimis or not will determine what type of tax will be incurred as well as who will incur the tax. The provisions of 86 Ill. Adm. Code 140.145 explain the different ways in which servicemen may handle their tax liability in multi-service scenarios.

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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