

A medicine or drug is “any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities.” See 86 Ill. Adm. Code 130.310. (This is a GIL.)

May 28, 2009

Dear Xxxxx:

This letter is in response to your email dated April 22, 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.

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:

In accordance with the provisions of Title 2, Part 1200, Section 12000.110 [sic] as set forth under Illinois state law, we request that the Illinois Department of Revenue provide information regarding the taxability of fluoride toothpaste. After a detailed review of both Illinois state regulations and recently issued letter rulings, it is unclear whether this type of toothpaste should be taxed at the reduced rate of 1%.

We have reviewed the following ruling which has been issued regarding toothpaste:

ST 99-0299-GIL

An example is toothpaste. If the label merely says ‘freshens breath’, then the toothpaste would be subject to the 6.25% rate of tax. Alternatively, if the label were to say ‘kills germs’ then the toothpaste would be subject to the low 1% rate of tax.

In addition to this ruling, we have reviewed Regulation Section 130.310. While Title 86, Part 130, Section 130.310 describes medicines, and examples of medicinal claims (i.e. medicated, fights infection), versus other types of claims (i.e. prevents, protects), it is still unclear as to whether fluoride toothpaste would be taxed at the high rate of [sic] reduced rate of tax.

Fluoride toothpaste includes a drug facts panel that notes the amount (percentage) or fluoride included in the toothpaste, amongst other ingredients. Fluoride is the reduced form of fluorine, and is placed into toothpaste (as well as water supplies) to prevent tooth decay.

Though we are under the impression that the inclusion of a medical facts panel, stating the level of fluoride contained in the toothpaste, warrants taxing fluoride toothpaste at the reduced rate of 1%, we would like confirmation from the Department. We believe such confirmation is necessary, as fluoride toothpaste boxes/tubes may sometimes note that it fights infection, prevents cavities, and freshens breath. Though such statements may be made regarding fluoride toothpaste, it should be noted that one of the main reasons people brush their teeth with fluoride toothpaste is to prevent cavities and gum disease, and to maintain healthy, long lasting teeth.

In summary, we have two questions:

1. Is fluoride toothpaste taxable at a reduced rate of 1%
2. Is a 'drug facts panel' in and of itself an indication that an item, such as toothpaste, is considered to have medicinal value, and therefore taxable at a reduced rate?

Your prompt attention to these questions will be appreciated. If you need any further information, please contact me.

DEPARTMENT'S RESPONSE:

I direct your attention to the Department's regulation regarding the appropriate tax rates to apply to the sale of food, drugs and medicines. 86 Ill. Adm. Code 130.310 (Food, Drugs, Medicines and Medical Appliances). Food that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) is taxed at the rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. Products that do not meet the appropriate definitions of food, drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

Under the Retailers' Occupation Tax Act, a medicine or drug is any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which 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 86 Ill. Adm. Code 130.310(c). The rule was amended in 2002 to provide examples of claims that do constitute medical claims and those that do not. The following information may assist you in making the determination whether the items you have referenced qualify as a drug or medicine under Section 130.310(c).

Examples of medicinal claims that will qualify the product for the low rate of tax include, but are not limited to:

- i) medicated
- ii) heals (a medical condition)

- iii) cures (a medical condition)
- iv) for relief (of a medical condition)
- v) fights infection
- vi) stops pain
- vii) relief from poison ivy or poison oak
- viii) relieves itching, cracking, burning
- ix) a soaking aid for sprains and bruises
- x) relieves muscular aches and pains
- xi) cures athlete's foot
- xii) relieves skin irritation, chafing, heat rash and diaper rash
- xiii) relief from the pain of sunburn
- xiv) soothes pain.

Please note the use of the terms "antiseptic," "antibacterial" or "kills germs" may or may not constitute a medicinal claim. The use of these terms in conjunction with a claim that the product kills germs in general does not constitute a medicinal claim. However, a claim that a product is for use as an antiseptic to kill germs to prevent infection in cuts, scrapes, abrasions and burns does constitute a medicinal claim.

Examples of claims that do not constitute medicinal claims include, but are not limited to:

- i) cools
- ii) absorbs wetness that can breed fungus
- iii) deodorant, or destroys odors
- iv) moisturizes
- v) freshens breath
- vi) antiperspirant
- vii) sunscreen
- viii) prevents
- ix) protects.

The Department's experience is that the manufacturers' claims regarding fluoride toothpaste generally concern the prevention of tooth decay. "Prevention of tooth decay" is not a medical claim. Therefore, toothpaste containing such a claim does not qualify for the 1% rate on medicines or drugs. The Department looks at medical claims to determine whether a medicine or drug will qualify the product for the low rate, not whether the product packaging contains a "drugs fact panel."

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,

Richard S. Wolters
Associate Counsel

RSW:mks