

This letter concerns the low 1% State rate of tax applicable to food, drugs and medical appliances. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

February 28, 2008

Dear Xxxxx:

This letter is in response to your letter dated June 26, 2007, 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](http://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:

PERSON and I am the AR Manager of ABC, a medical device manufacturer, located in CITY/STATE. The intent of this correspondence is to respectfully request for [sic] a Letter Ruling from the department regarding whether PRODUCT, (the product manufactured by ABC) can be deemed exempt from sales & use tax in Illinois.

PRODUCT is categorized by the FDA as a Class III Medical Device, which is the most extensively regulated class under the 'Medical Device Amendments of 1976' by the FDA. PRODUCT is permanent, injectable dermal filler used for the correction of skin depressions caused by traumatic scars, acne scars, viral infections and wrinkles. PRODUCT primarily consists of bovine collagen and polymethylmethacrylate (PMMA) microspheres. The PMMA is non-phagocytosable by microphages or giant cells and non-degradable by enzymes. Therefore, the microspheres remain intact in the dermal/sub dermal junction of skin, forever.

ABC's product, is injected as an outpatient procedure by only Company trained physicians such as dermatologists, plastic surgeons, cosmetic surgeons, etc.

We have been informed by our physician customers (who use both our product and our competitor's products) that our competitors have received exemption from the state of Illinois for dermal fillers, such as PRODUCT. For the purposes of helping to streamline

your research, the product brand names for some of our competitor's products are BRAND NAMES.

For the purposes of streamlining your research I have attached some promotional materials, information that ABC sends to the physicians and label information

ABC is anxious to receive your final ruling as to whether the product is deemed exempt from sales and use tax in the state of Illinois.

Assuming that the state exempts the PRODUCT product, please advise us as to how our ABC clients who have paid the sales tax to ABC and ABC in turn, has remitted to the State of Illinois, request refunds from the state for taxes paid. For example: do we request the refund on behalf of our clients or would the client request the refund directly? Further, is there a form involved in requesting the refund? Additionally some states require the businesses in their states fill [sic] out a specific form to [sic] even if an exempt ruling is received by the state. Please advise if ABC will be permitted by the state to use the single ruling letter as exemption for all clients, or will ABC need to require each of our Illinois clients fill [sic] out the exemption form and return it to ABC for future audit purposes.

If the state deems the product taxable, we would appreciate knowing of any other exemption possibilities that our physician clients may be worthy of receiving but may not be aware of.

As is the case with most businesses, we are in a very competitive marketplace and if our competitors are in fact, not charging our common physician clients for sales and use tax, we would like any guidance you may be able to provide to allow us to become equally as competitive and generate more Revenue to the benefit of the state of Illinois.

Please feel free to contact me at any time to discuss any questions you may have pursuant to this request for ruling.

Thank you again for your prompt response to the important issue.

## **DEPARTMENT'S RESPONSE**

We are unable to provide you with the specific response you request in the context of a General Information Letter. We are directing your attention to 86 Ill. Adm. Code 130.310 regarding the taxation of Food, Drugs, Medicines and Medical Appliances. Those products that qualify as medicines, drugs, or medical appliances are taxed at the reduced low rate of 1% plus applicable local taxes. Those that do not qualify for the low rate are taxed at the State 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 130.310(c)(2) 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. In addition, not all items prescribed by physicians or other licensed health care professionals qualify for the low rate. A medicine or drug is defined at Section 130.310(c)(1) as "any pill, powder, potion, salves, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities."

Examples of items that qualify for the reduced rate are artificial limbs, dental prostheses and orthodontic braces, heart pacemakers, crutches and orthopedic braces, and wheelchairs. 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 130.310(c)(2).

Claims for credit and refunds are available when a taxpayer shows that he paid tax to the Department as a result of a mistake of fact or law. See 86 Ill. Adm. Code 130.1501. As the Department's regulation for filing claims for credit provides, the statute of limitations for filing claims is 3 to 3 1/2 years and it expires in six month blocks. See 86 Ill. Admin. Code 130.1501(a)(4). Forms are available on the Department's website.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Debra M. Boggess  
Associate Counsel

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