

Nonprofit hospitals which qualify as exclusively charitable institutions are not taxable when selling food, medicine or grooming and hygiene products to their patients in connection with the furnishing of hospital service to them. See 86 Ill. Adm. Code 130.2005(b)(1)(a) and 130.2005(a)(2)(A). (This is a GIL.)

October 16, 2015

Dear Xxxxx:

This letter is in response to your letter dated September 11, 2015, 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:

This is a follow up request from a previous General Information (response issued as ST 15-0023-GIL dated 04/24/2015) pursuant to the provisions of 2 Ill. Admin. Code 1200 regarding the exemption of Illinois Retailers’ Occupation Tax on the sale of beauty products to patients, students, and staff (see attached.)

RELEVANT CITATIONS (from original request)

- 1) Per Illinois Retailers’ Occupation Tax 35 ILCS 120/2:

A tax is imposed upon persons engaged in the business of selling at retail tangible personal property.

- 2) Per Illinois Regulation Title 86 Part 130 Section 130.2005(b)(1), Hospital Sales:

Nonprofit hospitals which qualify as exclusively charitable institutions are not taxable when selling food or medicine to their patients in connection with the furnishing of hospital service to them.

In the case of hospitals which qualify as charitable institutions, such as hospitals are not taxable when selling drugs to anyone because this is for the relief of the sick (which is the hospital's primary purpose) and so is "primarily for the purpose of" such hospitals, thus qualifying such transactions for tax exemption.

- 3) Per ST 99-0044-GIL (Jan. 29, 1999) Exempt Organizations:

Section 130.2005(b)(1): This regulation would also apply to health care clinics that have received an E number from the Department.

- 4) Per Illinois Regulation Title 86 Part 130 Section 130.2005(a)(2), Sales to Members:

The first exception is that sales by such an organization are not taxable if they are made to the organization's members, or to its students in the case of a school or to its patients in the case of a nonprofit hospital which qualifies as a charitable institution, primarily for the purposes of the selling organization.

- 5) Per Illinois Regulation Title 86 Part 130 Section 130.2005(a)(3), Noncompetitive Sales:

The second exception is that sales by exclusively charitable, religious or educational organizations are not subject to the Retailers' Occupation Tax when it can be said that such selling is noncompetitive with business establishments.

- 6) Per Illinois Regulation Title 86 Part 130 Section 130.311(b), Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products:

Medicines and Drugs. Except for grooming and hygiene products described in subsection (c), a medicine or drug is any pill, powder, potion, salve or other preparation for human use that purports on the label to have medicinal qualities.

ADDITIONAL CITATIONS

- 1) Per Illinois Regulation Title 86 Part 140 Section 140.101(a), Basis and rate of the Service Occupation Tax:

The Service Occupation Tax Act imposes a tax upon persons engaged in this State in the business of making sales of service, based on the tangible personal property transferred incident to sales of service. These persons are referred to in the Part as serviceman.

- 2) Per Illinois Regulation Title 86 Part 130 Section 130.311(b)(3), Medicines and Drugs:

Examples of claims that do not constitute medicinal claims include, but are not limited to: moisturizers, sunscreen, prevents, protects, etc.

- 3) Per Illinois Regulation Title 86 Part 130 Section 130.311(c)(1) and (2), Grooming and Hygiene Products:

As a result, on or after September 1, 2009:

- A) nonprescription medicines and drugs that are grooming and hygiene products do not qualify for the 1% rate of tax for medicines and drugs under subsection (b). Grooming and hygiene products do not qualify for the 1% rate, regardless of whether the products make medicinal claims or meet the definition of over-the-counter drugs. Grooming and hygiene products are taxed at the general merchandise rate of 6.25%
- B) products available only with a prescription are not “grooming and hygiene products”.

Examples of products that are grooming and hygiene products include, but are not limited to: moisturizers, acne products, skin creams, lotions, ointments, and conditioners, lip balms, etc.

- 4) Per ST 03-0047-GIL (March 28, 2003) Food, Drugs, & Medical Appliances

Skin care products generally do not qualify for the 1% rate of tax as medicine unless they purport on the label to have medicinal qualities.

If physicians make over-the-counter sales of tangible personal property, that is otherwise available at retail, those sales will be subject to the Retailers' Occupation Tax liability.

When a dermatologist transfers tangible personal property to a patient incident to his rendering dermatological services, such as collagen injections are administered to the patient, the dermatologist will be

subject to the Service Occupation tax, rather than the Retailers' Occupation Tax.

5) Per ST 11-0003-PLR (February 28, 2011) Medical Appliances

Simply because a product is sold by "prescription only" does not mean that the product automatically qualifies for the low rate of tax as a medicine or drug.

6) Per ST 05-0003-PLR (May 5, 2005) Medical Appliances

Skin Care Products: If the deodorants or creams have medical claims on their labels, then they may qualify for the lower 1% State rate of tax provided for medicines or drugs.

7) Per ST 99-0299-GIL (September 30, 1999) Drugs

In regards to lip balms, whether a lip balm is taxable depends upon the claim made on the label. If the label indicates that the balm is only to restore moisture or contains aloe vera, the lip balm would be taxable at the high rate of tax. However, to the extent that the label asserts a medicinal quality, such as the healing nature of the product, the lip balm would be subject to the low rate of tax.

Generally, suntan products including sunscreen are subject to the high rate of tax regardless of their SPF rating.

Soaps and other chemicals may qualify for the low rate if they are intended by the manufacturer for human use and purport on the label to have medicinal qualities. Soaps that are antibacterial or medicated qualify for the low rate. Lotions also may qualify for the low rate if they meet the above requirements.

RULING CLARIFICATION REQUESTED

The University operates a hospital and healthcare clinics in conjunction with its medical school. At the University facilities, sales of products are limited to patients only by prescription (see attached list). However, some of the same products are available for purchase from other physician's offices, pharmacies, or other retail store locations (including online stores such as amazon.com or dermstore.com) without a prescription.

As stated in the GIL response ST 15-0023-GIL (April 24, 2015) Exempt Organizations per the original GIL request:

A nonprofit hospital that qualifies as exclusively charitable does not incur ROT on the sale of drugs to its patients in furtherance of providing its hospital service to them. Nor will the exempt hospital incur ROT when selling other grooming and hygiene products to the patient while he/she is a patient in the hospital or clinic because these products are provided in furtherance of the patient's care. See 86 Ill. Adm. Code 130.2005(a)(2)(a). However, after a patient has left the hospital, if he/she returns to purchase products which do not meet the definition of "drug," the hospital will incur ROT when selling such items. This generally includes grooming and hygiene products.

The University requests confirmation regarding the Retailers' Occupation Tax sales tax rate (high of 6.25%, low of 1%, or exemption) or Service Occupation Tax for the following types of products provided to patients under these various scenarios:

- 1) If a patient undergoes a procedure at a clinic/doctor's office, would the drugs/medicines/beauty products be exempt from the sales tax because the products are provided in furtherance of the patient's care?
- 2) If a doctor transfers beauty products incident to services rendered during an appointment, would sales tax be calculated and submitted based one of the four methods per Illinois Regulation Title 86 Part 140.101?
- 3) If the patient receives a prescription(s) during an office visit and fills them immediately following the appointment, would the tax rate be 1% if the drug or medicine contains medicinal qualities as indicated on the label? Would the tax rate be 6.25% if the drug or medicine does not contain medicinal qualities?
- 4) If the patient calls the doctor's office a prescription refill(s) without receiving medical services, would the tax rate be 1% if the drug or medicine contains medicinal qualities as indicated on the label? Would the tax rate be 6.25% if the drug or medicine does not contain medicinal qualities?

Attached are two examples of products (Topix Ultra Lite Moisture Dew Cream and Replenix Power of Three Cream) that are sold at the University and are only available only [sic] by prescription but may be purchased at an online store (e.g. Dermstore.com or Amazon.com) or other retailer. At Dermstore.com, the website lists the ingredients and sales tax at 6.25% is estimated. At Amazon.com, sales tax is not calculated until the customer is signed into account, credit card information is entered, and purchase is made.

For these two examples, is the University required to collect and submit sales tax? If yes, what tax rate should be assessed (1% if the drug or medicine contains medicinal qualities or 6.25% if the drug or medicine does not contain medicinal qualities)?

Please contact me at XXX-XXX-XXX or [\[email\]](#) if you have any questions or require additional information.

Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

A nonprofit hospital that qualifies as exclusively charitable does not incur Retailers' Occupation Tax (ROT) on the sale of drugs to its patients in furtherance of providing its hospital service to them. Nor will the exempt hospital incur ROT when selling other grooming and hygiene products to the patient while he/she is a patient in the hospital or clinic because these products are provided in furtherance of the patient's care. See 86 Ill. Adm. Code 130.2005(a)(2)(a). However, after a patient has left the hospital, if he/she returns to purchase products which do not meet the definition of "drug," the hospital will incur ROT when selling such items. This generally includes grooming and hygiene products.

In response to your first question, if a patient undergoes a procedure at a nonprofit hospital or clinic with a valid E-number, the drugs and products which are provided by the exempt entity in furtherance of the patient's care while he/she is receiving care in the hospital or clinic are exempt from ROT because the products are provided in furtherance of the patient's care. See 86 Ill. Adm. Code 130.2005(a)(2)(a). Again, after a patient has left the hospital, if he/she returns to purchase products which do not meet the definition of "drug," the hospital will incur ROT when selling such items. This generally includes grooming and hygiene products.

Regarding your second question, if a physician at a nonprofit hospital or clinic which has a valid E-number transfers products incident to service rendered during a patient's appointment, the tangible personal property which the physician transfers incident to a patient's care in the hospital or clinic is exempt from ROT. See 86 Ill. Adm. Code 130.2005(a)(2)(a).

In response to your third and fourth questions, we cannot determine the appropriate rate of tax without examining the product labels for each item. However, if the patient receives a prescription for a product, the rate of tax will depend on whether the item qualifies as a drug. If the item meets the definition of "drug" it will be taxed at the lower rate of 1%. A medicine or drug is any pill, powder, potion, salve, or other preparation for human use that 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 Section 130.311 for examples of medicinal claims. Examples of qualifying products include prescription drugs or medicines and nonprescription drugs or medicines such as aspirin or other pain relievers that purport on the label to have medicinal qualities. The term "nonprescription medicines and drugs" does not include grooming and hygiene products. Grooming

and hygiene products include, but are not limited to, soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, unless those products are available by prescription only. Please note that if an item is a nonprescription grooming and hygiene product, it will be taxed at the State 6.25% general merchandise rate regardless of any medicinal claims made on the product's label. Please refer to 86 Ill. Adm. Code 130.311 for a list of common grooming and hygiene products.

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,

Cara Bishop
Associate Counsel

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