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# TAX TRENDS

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## Illinois Governor signs sales tax bill providing clarity for new cancer treatment

By *David J. Kupiec and Natalie M. Martin*

On August, 19, 2016, Illinois Governor Rauner signed Senate Bill 3047 (Public Act 99-0858) which provides that FDA classified medical devices that are used for cancer treatment pursuant to a prescription will be taxed at the reduced 1% rate of tax applied to medicines rather than the standard 6.25% sales tax rate. The law firm of Kupiec & Martin, LLC drafted the language of SB3047 in an effort to provide clarity as to the taxation of the next generation of cancer treatment being used in Illinois either separately or in conjunction with radiation and chemotherapy treatments. Senate Bill 3047 passed both the Illinois Senate and Illinois House of Representative unanimously and the primary sponsors of the Bill were Senator Nybo and Representative Breen.

Clarity in this area was required as the cancer patient's receipt of a prescription for treatment was not determinative as to whether the treatment qualified as medicine, a drug or medical appliance for purposes of receiving the lower 1% rate of tax. Simply because a product is sold by "prescription only" does not mean that the product automatically qualifies for the low rate of tax (ST 05-0003-PLR). In a recent General Information Letter, ST-15-0080-GIL, citing Regulation 86 Ill Adm. Code Section 130.311, the Illinois Department of Revenue Attorney explains:

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. 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.

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.

Those 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.

In an effort to keep the Illinois Retailers' Occupation Tax Act and Use Tax Act current with technology and innovation for cancer treatments, Senate Bill 3047 amended, in pertinent part, Sections 35 ILCS 120/2-10 and 35 ILCS 105/3-10, which state that medicine and medical devices are subject to a 1% rate of tax, by inserting immediately after the words "prescription and nonprescription medicines, drugs, medical appliances," the new language "products classified as Class III medical devices by the United States Food And Drug Administration that are used for cancer treatment pursuant to a prescription, as well as any accessories and components related to those devices." Public Act 99-0858 is effective August 19, 2016. □

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