

FINAL PRIVATE LETTER RULING

REQUEST LETTER

09-020

[Undated]

Utah State Tax Commission
210 North 1950 West
Salt Lake City UT 84134

To Whom It May Concern:

COMPANY, a retail TYPE store operation, would like a written opinion on the sales and use taxability of a proposed promotional transaction. COMPANY will be administering limited free flu vaccines to individuals with no insurance. These flu vaccines do not require prescriptions. Individuals that meet the requirements for the free flu vaccines will receive a voucher from COMPANY that is to be presented at the time of vaccination. This will not be a coupon program which will be reimbursed by any manufacturer. COMPANY would like to know if use tax is owed on the cost of the flu vaccine when it is administered with this proposed free program.

Thank you for your assistance in this matter.

NAME
TITLE
COMPANY
ADDRESS
PHONE
FAX

RESPONSE LETTER

January 28, 2010

NAME
TITLE
COMPANY
ADDRESS

RE: Private Letter Ruling Request—The Sales and Use Tax Treatment of Administering Limited Free Flu Vaccines to Individuals with No Insurance

Dear NAME:

You requested a ruling on whether use tax would be owed on the cost of the flu vaccine that COMPANY would administer under a proposed free program. You explained that COMPANY would administer a limited number of free flu vaccines to individuals with no insurance. You stated that these flu vaccines do not require prescriptions and that the individuals who qualify for the free flu vaccines would receive vouchers from COMPANY that would be presented at the time of the vaccinations. You also stated that this would not be a coupon program with reimbursements from any manufacturer.

I. Applicable Law

Utah Code Ann. § 59-12-103(1) imposes tax on “(a) retail sales of tangible personal property made within the state.”

Utah Code Ann. § 59-12-104(10) provides an exemption for amounts paid for certain drugs and syringes, providing in part:

- (a) amounts paid for an item described in Subsection (10)(b) if:
 - (i) the item is intended for human use; and
 - (ii) (A) a prescription was issued for the item; or
 - (B) the item was purchased by a hospital or other medical facility; and
- (b) (i) Subsection (10)(a) applies to:
 - (A) a drug;
 - (B) a syringe; or
 - (C) a stoma supply

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Utah Code Ann. § 59-12-102(34) defines drug, stating:

- (a) "Drug" means a compound, substance, or preparation, or a component of a compound, substance, or preparation that is:
 - (i) recognized in:
 - (A) the official United States Pharmacopoeia;
 - (B) the official Homeopathic Pharmacopoeia of the United States;
 - (C) the official National Formulary; or
 - (D) a supplement to a publication listed in Subsections (34)(a)(i)(A) through (C); [or]
 - (ii) intended for use in the:
 -
 - (E) prevention of disease . . .
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Utah Code Ann. § 59-12-104(12) provides an exemption for sales of food provided for a patient by a medical facility or a nursing facility. For this exemption, Utah Admin. Code R865-19S-61 ("Rule 61") defines "medical facility" in part as follows:

"Medical facility" means a facility:

- a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and
- b) licensed under Section 26-21-8.

R865-19S-61, subsection 1.

II. Analysis

We assume that each flu vaccine includes a drug as defined in § 59-12-102(34) and a syringe. Under § 59-12-103(1), the flu vaccines are tangible personal property subject to tax unless an exemption applies.

For this situation, we will consider the exemption in § 59-12-104(10), which applies to certain drugs and syringes. For this exemption to apply, two requirements must be met. First, the vaccines must be for human use, which is true for this ruling. Second, either a prescription must be issued or the vaccine must be purchased by a hospital or other medical facility. In this ruling, prescriptions are not required, so we will consider whether COMPANY could be a medical facility.

Medical facility as used in § 59-12-104(10) is not defined in the Utah Code or through an administrative rule. Although a definition is provided in Rule 61, it was adopted for a different context. While we considered whether the definition in Rule 61 should be applied to § 59-12-104(10), we found that it should not. The definition for § 59-12-104(12) is narrower than we would expect for § 59-12-104(10). The definition for § 59-12-104(12) contemplates facilities in which there is a need for patient meals. In that case, we believe a narrow definition of medical

facility is consistent with the specific statutory requirement for the exemption to apply only to meals for patients.

In contrast, the exemption under § 59-12-104(10) contemplates a population beyond patients, extending to the public in general; there is no defined group of users. Although we are required to construe statutes narrowly against exemption,¹ we do not believe the legislature intended to restrict the exemption to a specific group of users. Because the term “medical facility” as used under § 59-12-104(10) is undefined, we look to standard definitions. After culling several online dictionaries, as well as *Black’s Law Dictionary*, we find that a “facility” can reasonably be described as something designed, created, built, installed, or established to serve a particular purpose, to provide a service, or to fulfill a need. We find further that a generally accepted definition of “medical” to be pertaining or relating to the practice of medicine.

A final, critical element of our determination is that the vaccines are administered by qualified, state-licensed health care professionals.

While even under this definition COMPANY as a whole is not a medical facility, we find that a portion of the facility, particularly the pharmacy is established for health care and medical related purposes. Accordingly we find that COMPANY is functioning as a medical facility while it is administering the vaccines under the proposed free program. We assume that a state-licensed healthcare professional is on site to administer the vaccines.

III. Conclusion

COMPANY would not owe use tax on the cost of the flu vaccine that it would administer under its proposed free program. Our conclusions are based on the facts as described and the Utah law currently in effect. Should the facts be different or if the law were to change, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, if you have additional facts that may be relevant, or if you have any other questions, please contact us.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/aln
09-020

¹ See *Gull Labs, Inc. v. Utah State Tax Comm’n*, 936 P.2d 1082, 1084 (Utah Ct. App. 1997).