

Effective September 1, 2009, "soft drinks" mean non-alcoholic beverages that contain natural or artificial sweeteners; but "soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume. See 35 ILCS 120/2-10. (This is a GIL.)

December 27, 2010

Dear Xxxxx:

This letter is in response to your letter dated December 15, 2010, 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:

ABC sells nutritional, dietary, and skin care products through a multi-level network of independent distributors. ABC is considered an 'MLM' or multi-level marketer such as Amway. Our physical location is in CITY/STATE. ABC charges sales tax based upon the address to which we ship and based upon suggested retail price, with one minor exception. Orders which have been certified for personal usage by our distributors and are less than \$500 retail value are taxed based upon wholesale pricing. ABC files one consolidated state sales/excise tax return in lieu of each independent distributor filing a separate return with your state.

We are launching a new product in February 2011. The new product is a 'mental clarity' dietary supplement in liquid form. I am requesting a formal ruling on the taxability of this new product. I have included a copy of the product label to assist in the ruling.

Please send the letter ruling or binding opinion by mail or e-mail to my attention. If you need additional information, please contact me by phone.

Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

Please note the Department's response is limited to your question regarding the State tax rate applicable to the product you have referenced.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Illinois imposes a Use Tax on the privilege of using in this State any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These two taxes are complimentary in nature and together are commonly referred to as the "sales tax". The sales tax rate is 6.25%, plus any applicable local taxes.

For your information and reference, the Department's regulations on the reduced tax rate under the Retailers' Occupation Tax Act applicable to food, drugs, medicines, medical appliances and grooming and hygiene products can be found on the Department's website at www.tax.illinois.gov. The regulation on Foods, Soft Drinks and Candy can be found at 86 Ill. Adm. Code 130.310. The regulation on Drugs, Medicines, Medical Appliances, and Grooming and Hygiene Products can be found at 86 Ill. Adm. Code 130.311.

Alcoholic beverages, soft drinks, candy, and food that is prepared for immediate consumption are taxed at the regular sales tax rate of 6.25%, plus any applicable local taxes. Generally, a 1% sales tax rate, plus any applicable local taxes, is applied to food prepared for consumption off the premises where sold.

Food is defined as "any solid, liquid, powder or item intended by the seller primarily for human consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice." See Section 130.310(c)(1). Beginning September 1, 2009, "soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners; but "soft drinks" does not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume. Section 130.310(d)(6).

Those products that qualify as drugs, medicines and medical appliances also 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. 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.

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