

This letter concerns the 6.25% State rate of tax applicable to candy. 86 Ill. Adm. 130.310.
(This is a GIL.)

February 28, 2011

Dear Xxxxx:

This letter is in response to your letter dated October 5, 2010, in which you requested a Private Letter Ruling. 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:

We are requesting a private letter ruling concerning several consumer items sold to retail customers at our STORES. We are inquiring about the Retailers' Occupation Tax that should be applied on the sale of certain items.

The first item is **baking ingredients such as colored sugar crystals or sweetened 'sprinkles'** commonly used to complete and/or decorate cupcakes, cookies, or cakes. Is the correct tax 6.25% (general merchandise) or 1% (qualifying food, drugs, and medical appliances)?

The second item is **salad toppings that are to be used as an ingredient to salads, rice and pasta dishes.** The toppings are combinations of many food items that often include sweetened nuts and/or flour. An example of this type of product is 'Salad Pizazz' found in many grocery store produce sections. Is the correct tax 6.25% (general merchandise) or 1% (qualifying food, drugs, and medical appliances)?

The third item is **smoking cessation gum** such as the sugar-free nicotine gum Nicorette. Is the correct tax 6.25% (general merchandise) or 1% (qualifying food, drugs, and medical appliances)?

To assist with that determination shown below are the ingredients in Nicorette:

'The active ingredient in Nicorette Gum is nicotine-resin complex.

Nicorette Gum:

Other ingredients in both strengths of Nicorette Gum are chewing gum base, sorbitol powder, sorbitol 70%, flavour for smoker, haverstroo flavour, sodium carbonate anhydrous, and glycerol 85%.

Nicorette Mint Gum:

Other ingredients in both strengths of Nicorette Mint Gum are chewing gum base, xylitol, peppermint oil, menthol, sodium carbonate anhydrous, and magnesium oxide light.'

The tax period at issue is September 2009 forward. Currently, there is a sales tax audit being conducted by the Illinois Department of Revenue for the tax period July 2003 through August 2009.

There are no contracts, agreements, instruments or other documents relevant to this request.

To the best of our knowledge the department has not ruled upon on [sic] these issues and we have not submitted these issues before.

There are no trade secrets to delete from the publicly disseminated version of this letter.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department has decided to respond with a GIL.

Although we cannot give you a specific answer in the form of a General Information Letter, we hope you find the following helpful. The Department's regulation regarding the appropriate tax rates for food can be found at 86 Ill. Adm. Code 130.310. Food that is to be consumed off the premises where it is sold (other than alcoholic beverages, candy, soft drinks, and food that has been prepared for immediate consumption) is taxed at the rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. Candy is defined as a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation that contains flour or requires refrigeration.

Again, the Department would like to direct your attention to its regulation regarding food where you can find examples of items which are considered candy and examples of items which would not be considered candy. For example, the regulation states that "baking sprinkles" are considered candy. However, as noted above, products whose ingredient list contain the word "flour" are not considered candy. Even though this regulation specifically identifies that "chewing gum" is considered candy, the Department has issued letters in the past wherein it has determined that gums intended by the manufacturer for the treatment of nicotine addiction in humans generally can qualify for the lower rate of tax.

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,

Debra M. Boggess
Associate Counsel

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