

This letter provides a brief summary of when the high rate of tax for food and the low rate of tax for food apply. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

December 29, 2011

Dear Xxxxx:

This letter is in response to your letter dated December 19, 2011, 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:

After calling the Illinois Department of Revenue at several different numbers and receiving conflicting information, we would like to have a ruling in writing as to what sales tax should be charged by our clients.

They are a small storefront cupcake store. In a one room store with one cash register and four small tables for customers they sell cupcakes and are currently charging 9.75% sales tax plus a 1% MPEA tax. Obviously, most of the cupcake sales are not for immediate consumption but sold by the dozen and eaten later. One of our clients came in to complain that the new cupcake store that opened down the street in a very similar situation is only charging 2.25% tax on their cupcakes and no MPEA tax. We then called several other cupcake stores in the area and they are all charging 2.25%. Have we been over-charging our customers?

We would appreciate a prompt reply to our question so that any changes that need to be made can be done by year-end. Thank you for your cooperation.

DEPARTMENT'S RESPONSE:

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 State rate of 1% plus applicable local taxes rather than the 6.25% general State merchandise rate. Please note that amendments to Section 130.310 regarding candy and soft drinks have recently been adopted and the updated rule is now available on the Department's website.

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food are presumed to incur tax at the high rate (6.25% State rate) on all food sales (including bulk or grocery type items). However, this presumption can be rebutted by evidence that the area for on-premises consumption are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of recording and accounting for collection of receipts from the sales of food prepared for immediate consumption (6.25% State rate) and the sales of food that are not prepared for immediate consumption (1% low State rate of tax). See 86 Ill. Adm. Code 130.310(b)(3). Please note that alcoholic beverages, candy and soft drinks are always taxed at the 6.25% State rate.

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the retailer has a separate means of recording and accounting for collection of receipts from sales of food prepared for immediate consumption (6.25% State rate of tax) and food not prepared for immediate consumption (1% low State rate of tax). If the establishment has a separate means of recording and accounting for collection of receipts from sales of food prepared for immediate consumption and food not prepared for immediate consumption, then only hot foods, soft drinks, candy, alcoholic drinks, and food prepared by the retailer for immediate consumption are subject to the 6.25% State rate of tax. If the establishment sells food prepared for immediate consumption and food not prepared for immediate consumption but has no separate means of recording and accounting for collection of receipts from sales of food prepared for immediate consumption and food not prepared for immediate consumption, all sales at that establishment are presumed to be at the 6.25% State rate of tax. If the establishment only sells food not prepared for immediate consumption, then all sales at that establishment (except for soft drinks, candy, and alcoholic beverages) are subject to the 1% State rate of tax.

The Food Flow Chart set out in the Department's administrative rules provides a quick reference for most retailers (other than restaurants and cafeterias) engaged in the sale of food. 86 Ill. Adm. Code 130.ILLUSTRATION C.

Please note that the term "food prepared for immediate consumption" means "food that is prepared or made ready by a retailer to be eaten without substantial delay after the final stage of preparation by the retailer." 86 Ill. Adm. Code 130.310(c)(2).

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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