

This letter concerns the sale of gift baskets. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

December 21, 2012

Dear:

This letter is in response to your letter dated October 23, 2012, 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:

I am requesting guidance on the tax rate to charge on holiday gift boxes our company will prepare and sell to businesses and individuals in the next few months. These gift boxes will primarily contain freshly roasted coffee beans along with candy-like products infused with natural flavors from our coffee.

By weight, these boxes will include approximately 80% coffee and 20% candy-like products. By value, they will contain over 90% coffee. The candy-like products involved are a mixture of individually wrapped chocolates infused with coffee flavor. Two-thirds of these confections qualify as candy under the regulations set forth in paragraphs 10 and 11 of 35 ILCS 120, Sec. 2-10. The other one-third of these confections (specifically malted milk balls covered in coffee-flavored chocolate) contain wheat flour and qualify as food items.

Roasted coffee is taxed at the food rate, and 1/3 of the rest of the gift box contents are also taxed at the food rate. Would you please provided [sic] us with guidance or a ruling about the tax rate to charge for these holiday gift boxes as a whole?

Thank you for your attention to this matter, and best wishes during the upcoming holiday season!

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 lower state tax 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.

The taxability of food items does not depend solely on the food item sold, but instead is determined primarily by the nature of the establishment selling the food products. Your letter does not indicate what the nature of your establishment is. The first step in determining the type of tax applicable to your food sales is to characterize the nature of your food sales as either food primarily prepared by you for immediate consumption or primarily "bulk" food (that is not prepared by you). To do this, you must examine all your food sales.

The term, "food prepared for immediate consumption," means food prepared by you to be eaten without substantial delay after the final stage of preparation. It includes all hot food items. If the majority -- over 50 percent -- of all food sales are bulk sales, the low rate applies to all your sales of food (except for hot food and alcoholic beverages and soft drinks). If the store provides on-premises dining facilities, however, the store will incur the high rate on all food items (even those that are bulk) unless the dining facilities are physically separated from the other areas and the retailer utilizes a separate means of recording the receipts from on-premises consumption from other sales.

Assuming that over 50% of your food sales are not food prepared by you for immediate consumption, and that you have no on-premises dining facilities, we believe that prepackaged coffee and candy-like products that do meet the definition of candy are all taxable at the low rate of tax (1% plus any applicable local taxes).

The taxability of the gift baskets involves application of another rule. If over 50% of the value of the gift basket stems from the food products contained in it, the item is considered a food and will be taxable, given the assumptions in the preceding paragraph, at the low rate of tax. If, however, over 50% of the value of the basket is derived from non-food or high-rate items (i.e., the basket itself and non-food items in the basket such as the alcohol beverages or candy), then the basket is taxable at the high rate established for general merchandise.

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