

This letter discusses the applicable sales tax rates for food and candy. *See* 86 Ill. Adm. Code 130.310. (This is a GIL.)

April 4, 2014

Dear Xxxx:

This letter is in response to your letter dated January 17, 2014, 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:

Please review the enclosed product labels for each item listed below, and provide us with a determination of sales taxability in your state. Please note that these products are categorized as whole foods.

Products: COMPANY Bar Spiced Apple + Raisin
 COMPANY Bar Wholesome Grains + Cranberries

I will be happy to provide additional information if needed. Thank you for your prompt attention to this matter.

Thank you for your assistance in this matter.

DEPARTMENT’S RESPONSE:

In the case of food that is sold for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, candy and food that has been prepared for immediate consumption), the tax is imposed at the rate of 1%. Food that is prepared for immediate consumption is taxed at 6.25% (State rate). For further information on the taxability of food, please see 86 Ill. Adm. Code 130.310. Food that is to be consumed off the premises where it is sold includes food sold from a vending machine, except soft drinks, candy, and food products that are dispensed hot from a vending machine.

Your letter does not state how your company conducts sales of its products. Please be advised that 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 generally incur tax at the high rate (6.25% State rate) on all food sales (including grocery type items).

However, if establishments sell both food that has been prepared for immediate consumption and grocery type items and also provide facilities for on-premises consumption, the lower rate of tax (1%) may be charged on the grocery type items (other than alcoholic beverages, candy, soft drinks, and food that has been prepared for immediate consumption) if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts. See 86 Ill. Adm. Code 130.310(b)(1).

Beginning September 1, 2009, all candy became taxable at the State 6.25% general merchandise rate. 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. Thus, if a product contains flour or requires refrigeration, it would not be considered "candy" even if it meets all the other elements of the definition. Because the definition of candy changed in September 1, 2009, the tax treatment of certain products went from the low 1% rate to the State 6.25% general merchandise rate.

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,

Cara Bishop
Associate Counsel

CB:ikm