

This letter discusses the State tax rate applicable to sales of food. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

October 16, 2015

Dear Xxxxx:

This letter is in response to your letter received September 21, 2015, 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](http://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 writing to request a private letter ruling to find out if a product we sell ABC qualifies as a food and should be taxed at the 1% food rate. Included with this is a print out of our product packaging/ingredient. If the type is too small or you need any additional information please contact me.

**DEPARTMENT’S RESPONSE:**

Please see the Department’s Regulation entitled “Food, Soft Drinks and Candy” at 86 Ill. Adm. Code 130.310 which can be found on the Department’s website. As you can see in the regulation, 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. In contrast, alcoholic beverages, candy, soft drinks and food that has been prepared for immediate consumption are taxed at the higher State sales tax rate of 6.25% plus applicable local taxes.

The regulation defines food 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.

Beginning 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. Thus, if a beverage contains a natural or artificial sweetener but also contains milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume, it would not fall within the definition of "soft drink" but, rather, it would fall within the definition of food.

Also 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.

We cannot provide a specific answer without more information about the product. Please be aware that the tax can also be impacted by the nature of your selling establishment. Please see 86 Ill. Adm. Code 130.310(b). However, it appears that the product is a powder which is intended to be mixed with liquid. Beverage powders and dry mixes are not considered soft drinks. See 86 Ill. Adm. Code 130.310(d)(6)(E)(i). Therefore this product is not a soft drink. This product is also not for immediate consumption. Based on this information, it appears that this product qualifies for the lower 1% rate of tax on food.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Cara Bishop  
Associate Counsel

CB:mdb

