

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

January 25, 2018

Dear Xxxxx:

This letter is in response to your letter dated December 21, 2017, in which you requested 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:

I am writing because two local groceries have classified an identical product differently for sales tax purposes. One of them must be incorrect and I would like to know which. As a consumer, I don’t want to be overcharged sales taxes. As an Illinois resident, I don’t want the State to be cheated out of revenue by undercharging.

The product at issue is PRODUCT, FLAVOR which is sold in 16.2 ounce bottles. RETAILER in CITY charges the “high” 6.25% State sales tax rate. RETAILER 1 in CITY 1 charges the “low” 1% State Rate. The product is not prepared by the retailer nor is there any other factor that would affect the sales tax classification other than the nature of the product.

The ingredients per the label are kombucha culture, black tea, green tea, kiwi juice, strawberry juice and pure love. I am assuming love does not affect the tax classification. I also believe listing love as an ingredient is a violation of federal labeling laws, as there was a recent case in the news on that point, but that is not my concern at the moment.

I submitted this question via the Revenue Department website but they felt the question had to be referred to you due to the fact that kombucha according to the label is a fermented product containing naturally occurring alcohol, and they didn’t know whether that would cause the product to be taxed as alcohol. The label gives no indication of

what amount of alcohol might be contained in a bottle. The amount cannot be great as the product is not sold as an alcoholic beverage.

**DEPARTMENT'S RESPONSE:**

Although we cannot give you a specific answer in the form of a General Information Letter, we hope you find the following helpful.

For your information and reference, the Department's regulations on the tax rates under the Retailers' Occupation Tax Act applicable to food and soft drinks can be found on the Department's website at 86 Ill. Adm. Code 130.310, Food, Soft Drinks and Candy.

Alcoholic beverages, soft drinks, candy, and food that is prepared for immediate consumption are taxed at the regular sales tax rate of 6.25%, plus any applicable local taxes. Generally, a 1% sales tax rate, plus any applicable local taxes, is applied to food prepared for consumption off the premises where sold.

Food is defined as "any solid, liquid, powder or item intended by the seller primarily for human consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice." See Section 130.310(c)(1). Soft drinks means non-alcoholic beverages that contain natural or artificial sweeteners; but soft drinks does 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. See Section 130.310(d)(6)(B). 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. Soft drinks are always taxed at the 6.25% rate. See Section 130.310(d)(6).

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,

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