

Manufacturers, importers or wholesalers can enter into an “agency agreement” with the Department, whereby they register, file returns and remit Retailers’ Occupation Tax on behalf of their local distributors. See 86 Ill. Adm. Code 130.550. (This is a GIL.)

September 13, 2018

Dear Xxxxx:

This letter is in response to your letter dated February 06, 2018, 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 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:

My name is NAME, CEO of COMPANY. We are a tax and accounting firm that deal primarily with COMPANY 1 Distributors. The reason for my letter is to request a formal response regarding the applicability of sales tax to my client’s business model.

My clients are Independent COMPANY 1 Distributors that operate nutrition clubs. A nutrition club is an office where they sell COMPANY 1 products and nutrition samples. The nutrition club allows potential clients to sample the nutrition shake before they purchase the entire nutrition program. We recently contacted a customer sales tax representative in your sales tax department to inquire as to the taxability of the sales made in the State of Illinois. However, they were unable to give us an answer and asked that we send a written request to get clarification on the issue.

Facts:

1. COMPANY 1 International charges the independent distributor the sales tax at the product’s full retail price on all nutritional products they purchase. Therefore, the independent distributor pays \$\$\$ for the nutrition shake canaster (at %% discount) but sales tax is applied @ (2.25%) to the retail price of \$\$\$\$ (see attached purchase order) and shipping and handling: The shake consumption is good for ## individual meals.
2. To promote the nutrition products, the COMPANY 1 Distributor gives samples to potential clients @ \$\$ per consumption. Therefore, they open the canaster and prepares a shake at their office (nutrition club) and allows the client to

sample the different flavors for a \$\$ fee. The preparation of the sample shake includes opening the canaster and taking a scoop of the meal powder and adding water to create the flavor sample. Normally a client samples one flavor per visit.

3. The independent distributor collects \$\$, which is the cost of a sample of the shake, shot of aloe juice and flavored tea. The distributor does not charge sales tax to end user (client) since the taxes were already paid by the independent distributor to COMPANY 1 International. (see bullet 1. above)
4. Then the potential client decides on a flavor, purchases the canaster (shake) with other nutritional product they want. Since sales taxes are always paid when the nutritional products are purchased from COMPANY 1 International, we believe no tax liability is due at the time of sale.

The part that we are not in agreement or understanding is the fact that the Distributor purchases their products from COMPANY 1 International directly and are taxed sales tax on the retail price. This happens because COMPANY 1 International has a blanket agreement with the State of Illinois which indicates COMPANY 1 International should collect sales tax and remit payments to the State on behalf of all its Distributors. The question arises when the taxpayer is operating their nutrition club and they break down the sale of the shake canaster into ## portions, the aloe shots and herbal hot tea. Does this require the collection of sales taxes and payment of sales taxes to the state of Illinois? Since sales taxes are paid at the retail price of the product we believe that the State of Illinois would be double taxing the sale of product. However, I don't know if a different tax rate other than 2.25% applies to the sale of the three items in the sample for \$\$ (see Step 2. above.)

We have concerned Distributors in the State of Illinois that want to comply with the necessary procedures to operate and pay all necessary sales taxes. Therefore, we would really appreciate a reply to our question in writing, so we can advise the Distributors on the correct way to operate their business. If you have any further questions or concerns or need further explanation on this, please feel free to contact me.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. Generally, the Retailers' Occupation Tax rate and Use Tax rate imposed by the State of Illinois is 6.25%. See 86 Ill. Adm. Code 130.310. Unlike the State tax rate noted above, local tax rates vary depending on the tax rate imposed by the local government in a particular jurisdiction. For local tax rates, see the Department's Tax Rate Database and the Tax Rate Finder on the Department's website at www.tax.illinois.gov.

Please review the Department's regulation at 86 Ill. Adm. Code 130.310, regarding the appropriate tax rates for food, soft drinks and candy. As you can see from the regulation, food 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) is taxed at the 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.

Products that do not meet the appropriate definition of food or that are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Based on the limited information concerning the products sold by your clients, we cannot determine which rate of tax applies. Reviewing the Department's regulation at 86 Ill. Adm. Code 130.310 may be helpful. Further, you indicate that your clients "give [prepared] samples to potential clients @ \$6 per consumption." That type of transaction actually appears to be a retail sale subject to the Retailers' Occupation Tax. We urge you to review the definition of soft drinks at 86 Ill. Adm. Code 130.310 to determine if the prepared sample product is taxable at the higher rate or the lower rate.

Please see the Department's regulation concerning the "Filing of Returns for Retailers by Suppliers Under Certain Circumstances" found at 86 Ill. Adm. Code 130.550. This regulation explains that manufacturers, importers or wholesalers can enter into an "agency agreement" with the Department, whereby they register, file returns and remit Retailers' Occupation Tax on behalf of their local distributors. You indicate in your letter that COMPANY 1 International has such an agreement with the Department. Under this type of agreement, the manufacturers, importers or wholesalers sell products to local distributors and collect tax from the distributors based upon the selling price to the ultimate consumers. The applicable tax is not based upon the sale to the local distributors. The appropriate tax must be collected for the entire sales to the distributors' ultimate customers (e.g., including the "samples" to potential clients @ \$\$ per consumption, as well as the sale of the canaster and any other nutritional products), which includes State and any applicable local tax.

When manufacturers, importers, or wholesalers operate under this type of agency agreement, the local distributor need not register, file returns or remit taxes since the manufacturers, importers or wholesalers have agreed to this responsibility. The local distributors should, however, retain a copy of the agreement. If they fail to provide such documentation upon demand by the Department, they will be required to register, file returns, and remit the appropriate amount of tax directly to the Department. Distributors who prefer to register and remit their own taxes may opt out of the agency agreement.

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