

Food items for immediate consumption are subject to the higher tax rate. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

February 28, 2019

Dear Xxxx:

This letter is in response to your letter received in this office on February 6, 2019, 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:

I am requesting a letter ruling about sales tax rates. I am a tax preparer and my client previously paid sales tax on items he sold at the rate of 10.25% but he is stating that he should be paying tax at the low rate of 2.25%.

My client is a street peddler. He has a mobile cart which he takes to the park and sells fruit snacks. This item is fruit, mangoes or pineapples, which he slices by hand and puts into individual 8 oz cups and sprinkles chile powder and lime over them. Customers take these cups with them to eat the fruit. This item makes up his entire food sales in the park.

Should this be taxed on the ST-1 at the high or low rate?

My client also stated that he is going to begin selling inside of a flea market. He will have a stand inside of the flea market to sell fruit smoothies which he prepares in a blender and he will also sell the sliced fruit in a cup?

Are the fruit smoothies taxable at the high or low rate?

Will the sliced fruit be taxable at the high or low rate at the flea market stand?

Lastly, if he peddles on the street and sells fruit (strawberries or grapes) that he puts in 10 oz Ziploc bags, is this taxable at the high or low rate?

Thank you for your clarification on this. Please send your response to: NAME, ADDRESS.

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. 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. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

Your client should be collecting Retailers' Occupation Tax at the general merchandise or high rate. Food vendors should be charging the high rate on all sales of food prepared for immediate consumption. Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer.

Retailers who sell food that they do not prepare in any way are not selling food for immediate consumption, *i.e.*, pre-packaged candy, chips, snacks, unless that food is to be consumed on the retailer's premises. "Premises" means the area over which the vendor exercises control. See, 86 Ill. Adm. Code 130.310. If the majority of sales made by food vendor are for immediate consumption, the vendor should assess the high rate of tax on all his transactions.

All food items which are served hot are considered for immediate consumption. Consequently, irrespective of whether the coffee or hot soup is sold by a street vendor, food service truck, or by the convenience store, will be taxed at the higher 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,

Richard S Wolters
Associate Counsel

RSW:rkn