

CBD products sold primarily for internal human consumption may qualify for the low State rate of tax. 86 Ill. Adm. Code 130.310. (This is a GIL.)

April 29, 2019

Dear Xxxxx:

This letter is in response to your letter received April 9, 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 of ruling on the sales tax amount I need to charge for selling CBD products in my new store. All products that we sell are derived from the hemp plant with less than .3 THC. (State and Federal law). I researched retailers [sic] occupation tax Section 130.311 but it does not list specifically anything about CBD/Hemp products being sold. We sell products that are topical creams -ointments and mostly ingested products (oils, edibles, beverages all with CBD)

COMPANY- Sales Tax # (###) WEBSITE, ADDRESS

DEPARTMENT'S RESPONSE:

The Department's regulation at 86 Ill. Adm. Code 130.310 discusses the appropriate tax rates for food, soft drinks and candy. Food that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, 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.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation for human use and that purports on the label to have medicinal qualities. See 86 Ill. Adm. Code 130.311. Therefore, if vitamins, food supplements or meal replacement drink mixes are for human use and purport on the label to have medicinal qualities, such items are considered to be drugs and are taxed at the low rate of tax. Since not many vitamins, food supplements or meal replacement drink mixes are likely to make medicinal claims, they would not qualify as a medicine or drug, however, such items would be considered to be food subject to 86 Ill. Adm. Code 130.310 at taxed at the 1% rate.

The Department is not aware that CBD products have labels that make medicinal claims and is unable to determine if they should be taxed as medicines or drugs. If the CBD products are sold primarily for internal human consumption, they would be considered as food and taxed at the rate of 1%.

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