

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 for human consumption that is to be consumed off the premises where it is sold. (This is a GIL.)

December 4, 2019

RE: Request Taxability of 24K product

Dear XXX:

This letter is in response to your letter dated May 30, 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:

COMPANY sells nutritional, dietary, and skin care products through a multi-level network of independent distributors. COMPANY is considered an “MLM” or multi-level marketer such as Amway. Our physical location is in CITY, STATE. COMPANY charges sales tax based upon the address to which we ship and based upon suggested retail price. COMPANY files one consolidated state sales/excise tax return in lieu of each independent distributor filing a separate return with your state.

While we have obtained previous rulings from your state on the taxability of our products and charges, we would like to ensure that our sales tax collection procedures are in compliance with all current law. At this time, please provide us with a letter ruling or binding opinion on the taxability of our NEW product, given recent changes.

In February 2011 we launched a product called NEW which is a “mental clarity” dietary supplement in liquid form. However, the product has recently been reformulated and is now only sold as a powder. The new version is the same product, but is no longer “ready for immediate consumption”: the user must first mix it with water or some other liquid. I am requesting a formal ruling on the taxability of this new product. I have included a copy of the product label to assist in the ruling.

We are seeking assurance if this product in its newest state is taxable or tax exempt per state regulations, and what category if applicable it falls. Please provide applicable guidance.

Thank you for your assistance.

DEPARTMENT'S RESPONSE:

In your letter, you indicated that you included a copy of the product label. There was no such label included with your letter. Notwithstanding, I hope you find the following helpful.

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. Illinois imposes a Use Tax 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 two taxes are complementary in nature and together are commonly referred to as the "sales tax". The sales tax rate is 6.25%, plus any applicable local taxes.

For your information and reference, the Department's regulations on the reduced tax rate under the Retailers' Occupation Tax Act applicable to food, drugs, medicines, medical appliances and grooming and hygiene products can be found on the Department's website at www.tax.illinois.gov. The regulation on Foods, Soft Drinks and Candy can be found at 86 Ill. Adm. Code 130.310.

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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).

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