

This letter concerns the 6.25% State rate of tax applicable to soft drinks. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

April 1, 2021

Dear Xxxx

This letter is in response to your letter dated December 16, 2020, 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 Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Further, the Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject of the request, the Department will decline to issue a letter ruling on the subject." 86 Ill. Adm. Code 1200.110(a)(3)(D). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope, however, the following General Information Letter will be helpful in addressing your questions. In your letter you have stated and made inquiry as follows:

COMPANY1 is a STATE based corporation and does business as a food retailer in Illinois. We would like to request a private letter ruling as to whether or not COMPANY2's Kombucha meets the definition of a soft drink for purposes of the Retailers' Occupation Tax.

COMPANY1 is not currently under audit by the Illinois Department of Revenue.

Per the requirements of Title 2 Part 1200 Section 1200.110(b):

1) Statement of Facts

COMPANY2's Kombucha is a product line currently consisting of 25 flavors. All of the ingredient lists on their packages follow the same format: COMPANY2's Kombucha* (kombucha culture*, black tea*, green tea*, kiwi juice*), (various non-concentrated fruit juices & flavorings), and 100% pure love!!! *Organically produced.

Please see Appendix A for the exact wording of the ingredient list for each variety in question. The Nutrition Facts panel on each package states "Includes 0g Added Sugars". All products list a juice content of between 2% and 5% on the label.

Illinois Administrative Code Section 130.310(d)(6)(B) defines a soft drink as:

"On and after September 1, 2009, the term "soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do 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. (Section 2-10 of the Act)"

Illinois Administrative Code Section 130.310(d)(6)(C) expands on what constitutes a natural or artificial sweetener:

"Natural and artificial sweeteners include, but are not limited to, corn syrup, high fructose corn syrup, invert sugar, dextrose, sucrose, fructose, lactose, saccharose, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, Rebaudioside A (Reb A), erythritol, xylitol, aspartame, saccharin, acesulfame K, sucralose and sorbitol. Beverages that list in the ingredient list natural and/or artificial sweeteners including, but not limited to, those listed in this subsection (d)(6)(C), meet the definition of "soft drinks". (Note, for purposes of this Section, natural and artificial sweeteners do not include natural or artificial flavors.)"

Analysis: The section of the Administrative Code defining a soft drink consists of three qualifying conditions. In order to be considered a soft drink under the definition, the beverage must:

- a) contain natural or artificial sweeteners
- b) not contain milk products or similar substitutes
- c) contain 50% or less vegetable or fruit juice

None of the products listed in Appendix A contain milk products or similar substitutes and all contain less than 50% vegetable or fruit juice. The

question at hand is do any of the ingredients listed qualify as “natural or artificial sweeteners” for the purposes of the definition, and if so, which ones?

- 2) We submit Appendix A, a listing of ingredients for each product in question as the only other document relevant to this request.
- 3) The tax period at issue is all time periods on and after the date of the Department’s private letter ruling.
- 4) To the best of our knowledge, the Department has not previously ruled on this or a similar issue for COMPANY1. We have not previously requested and subsequently withdrawn a ruling request on this issue:
- 5 &6) To the best of our knowledge, no State of Illinois authority has issued an opinion as to whether or not the products in question meet the legal definition of a soft drink for the purpose of the Retailers’ Occupation Tax.
- 7) This request contains no trade secrets.

DEPARTMENT’S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail 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.

In Illinois, soft drinks are taxed at the State sales tax rate of 6.25% regardless of the type of establishment where they are sold, e.g., a grocery store, restaurant, or vending machine. See 86 Ill. Adm. Code 130.310(d)(6). The term “soft drinks” means non-alcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do 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. 35 ILCS 120/2-10; 86 Ill. Adm. Code 130.310(d)(6)(B).

Several examples of natural and artificial sweeteners are listed in Section 130.310(d)(6)(C), and beverages that list any of these sweeteners as ingredients meet the definition of “soft drinks.” However, this list is not exhaustive. Fruit juices containing greater than 50% fruit juice are not soft drinks, even if these beverages contain natural or artificial sweeteners. 130.310(d)(6)(E)(vi).

Each of the 25 kombucha flavors discussed in your letter is composed of COMPANY2’s Kombucha as a base, which consists of kombucha culture, black tea, green tea, and kiwi juice. Other ingredients include various non-concentrated fruit juices and flavorings, depending on the flavor. Kombucha culture often utilizes a SCOBY, which is a “Symbiotic Culture of Bacteria and Yeast,” and the kombucha culture included in these products appears to do the same. According to COMPANY2’s website, a SCOBY “consumes sugar and caffeine during fermentation.” However, some COMPANY2 Kombucha products use kiwi juice instead of sugar during fermentation.

Generally, the Department prefers to issue private letter rulings to the manufacturer of the product at issue. The manufacturer has the most knowledge of the ingredients and production processes regarding a specific product. However, the Department attempts to provide sufficient information for a retailer to determine the proper tax rate for a product.

The Department will review the label and the ingredients listed on the product to determine the proper tax rate. According to each product’s listed ingredients provided to the Department, the kombucha flavors identified in your letter and exhibit do not contain any of the traditional natural or artificial sweeteners listed in Section 130.310(d)(6)(C), do not contain milk products or similar substitutes, and do not contain greater than 50% vegetable or fruit juice. It appears kiwi juice is used during the fermentation process to feed the yeast, and juice or fruit puree is added after fermentation. Fruit juice, other than fruit concentrate, is not considered a natural or artificial sweetener for the purposes of the regulation. A product containing 50% or less fruit juice does not necessarily cause the product to be considered a soft drink for purposes of the Act. Therefore, from the information the Department has been provided, it appears the products would not be classified as “soft drinks.”

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,

Alexis K. Overstreet
Associate Counsel

COMPANY1&2
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