

This letter discusses the State tax rate applicable to sales of food. See 86 Ill. Adm. Code 130.310 (This is a GIL.)

August 01, 2023

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated July 07, 2022, 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 called in to the Department of Revenue Sales Tax phone line today to inquire about the sales tax rate for a granola product our company, COMPANY (EIN: ##-#####) sells at retail locations, as well as via e-commerce through our website (ADDRESS2). They suggested I reach out to the Legal Services Office directly as there seems to be a grey area in my inquiry.

We are currently taxing all granola purchases at the grocery tax rate. It was recently brought to my attention that our granola technically is defined as a candy (per the definition of candy by the Illinois Department of Revenue) and as such should be taxed at the higher general merchandise tax rate. This is completely contradictory of every clean and natural ingredient we have in our granola. Below see the complete ingredient list.

COMPANY. PRODUCT Granola - INGREDIENT LIST:

COMPANY/ NAME

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organic buckwheat, organic almonds, honey, organic dried cherries, organic raw pumpkin seeds, coconut oil, organic unsweetened coconut, organic puffed amaranth, organic chia seeds, organic flaxseed meal, salt, spices. CONTAINS: ALMONDS AND COCONUT

Our granola is currently sold at several retail locations in the CITY area and is always sold in the granola/cereal aisle, never in the snacks or candy section. We are a gluten free, dairy free and soy free product and include absolutely no preservatives, nor do we include flour (because we use gluten-free grains) or require refrigeration.

This letter is to request a formal letter ruling from the Department of Revenue Legal Services Office on the appropriate sales tax rate (grocery/cereal tax rate or general merchandise/candy tax rate) we should be assigning to our granola products.

I look forward to hearing from you with a response at my business mailing address below.

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 at retail 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.

Please see the Department's regulation entitled "Food, Soft Drinks and Candy" at 86 Ill. Adm. Code 130.310 which can be found on the Department's website. As you can see in the regulation, food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, food consisting of or infused with adult use cannabis, soft drinks, candy, and food that has been prepared for immediate consumption) is taxed at the lower State tax rate of 1% plus applicable local taxes.

In contrast, candy, soft drinks, and food that has been prepared for immediate consumption are taxed at the higher State sales tax rate of 6.25% plus applicable local taxes. The regulation defines "food" 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. 86 Ill. Adm. Code 130.310(c)(1).

"Candy" is defined as a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings

in the form of bars, drops, or pieces. “Candy” does not include any preparation that contains flour or requires refrigeration. Thus, if a product contains flour or requires refrigeration, it would not be considered “candy” even if it meets all the other elements of the definition.

To determine whether an item meets the definition of “candy”, it must be analyzed using the factors listed below:

B) Flour: Products whose ingredient list contain the word “flour”, regardless of the type of flour (e.g., wheat, rice) are not candy. . . .

C) Refrigeration: Items that require refrigeration are not considered to be candy. . . .

D) Sweeteners: Candy is limited to products that contain sugar, honey, or other natural or artificial sweeteners. . . .

E) Bars, drops or pieces: Items must be in the form of bars, drops or pieces to be considered candy.

86 Ill. Adm. Code 130.310(d)(7)(B) through (E).

The regulation goes on to provide examples of items that are not considered candy because they do not meet the requirements of subsections (d)(7)(B) through (D). This list includes cereals as they are not in the form of bars, drops or pieces. 86 Ill. Adm. Code 130.310(d)(7)(G).

However, even “cereal” in the form of bars would be taxed at the high rate if it does not contain flour, contains sweeteners, and does not require refrigeration. As such, granola is a food item that may be low rate or high rate depending on its preparation. For instance, granola as cereal would be low rate, regardless of whether it has flour, is refrigerated, or has sweeteners because it is not in “bars, drops, or pieces”. Like cereal, granola in a bar form would be candy unless it contains flour or requires refrigeration. 86 Ill. Adm. Code 130.310(d)(7)(F)(xiv).

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,

Kimberly Rossini
Associate Counsel

COMPANY/ NAME

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KAR:dlb