

This letter discusses the State tax rate applicable to the sales of food. 35 ILCS 120/2-10; 86 Ill. Adm. Code 130.310. (This is a GIL.)

March 27, 2024

NAME
COMPANY
ADDRESS

Dear NAME:

This letter is in response to your letter dated January 31, 2024, 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. 2 Ill. Adm. Code 1200.120. You may access our website at <https://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:

Please review the enclosed product labels for the item listed below and provide us with a determination of sales taxability in your state. Please note that this product is categorized as whole foods.

Product: PRODUCT

I will be happy to provide additional information if needed. Thank you for your prompt attention to this matter. My email address is EMAIL and that is the best way to respond.

DEPARTMENT’S RESPONSE:

The Retailers' Occupation Tax Act ("Act") imposes a tax rate of 6.25% on gross receipts from sales of tangible personal property made in the course of business, unless otherwise specified in Section 2-10 of the Act. 35 ILCS 120/2-10. With respect to 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, and food that has been prepared for immediate consumption), the tax is imposed at the rate of 1%. 35 ILCS 120/2-10.

The Department's 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).

The term "soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does 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). Thus, if a beverage contains a natural or artificial sweetener but also contains milk or milk products, soy, rice, or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume, it would not fall within the definition of "soft drink" but, rather, it would fall within the definition of food.

"Food for human consumption that is to be consumed off the premises where it is sold" includes all food sold through a vending machine, except soft drinks, candy, and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine. "Food for human consumption that is to be consumed off the premises where it is sold" does not include candy. 35 ILCS 120/2-10.

"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. 35 ILCS 120/2-10; 86 Ill. Adm. Code 130.310(d)(7)(A). 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.

It should be noted that the tax rate may also be impacted by the nature of the selling establishment. See 86 Ill. Adm. Code 130.310(b). It appears that the products stated in your inquiry may be a powder which is intended to be mixed with liquid. Beverage powders and dry mixes are not considered soft drinks. 86 Ill. Adm. Code 130.310(d)(6)(E)(i). Powdered hot chocolate cocoa mix and other drink mixes are not considered candy. 86 Ill. Adm. Code 130.310(d)(7)(G)(vi). Therefore, this product would not be a soft drink or candy. This product also does not appear to be for immediate consumption. Based on this information, it appears that this product may qualify for the lower 1% rate of tax on food.

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,



Katarzyna
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Associate Counsel

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