

This letter discusses the State tax rate applicable to sales of food and medicine.  
35 ILCS 120/2-10; 86 Ill. Adm. Code 130.310, 311. (This is a GIL.)

June 4, 2024

COMPANY  
NAME  
ADDRESS

Dear NAME:

This letter is in response to your email dated May 9, 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:

We have been selling products in Illinois for several years now. A few weeks ago, one of our customers stated that our tax rate charged (6.25%) is incorrect. Per the customer, our product should be taxed at 2.25% (1% state plus local). I am trying to confirm the appropriate tax rate for our human and veterinary product. Our product comes in various strengths and all but one are non-prescription. It was my understanding that products that do not have a Supplemental facts or Drug facts panel do not receive the lower tax rate treatment. Although our product does not specifically list a disease that it treats, our product labeling states “PRODUCT is a high potency probiotic medical food intended for the dietary management of dysbiosis associated with irritable bowel syndrome (IBS), antibiotic-associated diarrhea, and hepatic encephalopathy (HE)”. Would this qualify for 1% tax treatment?

**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. Medicines

prescribed by veterinarians for animals are subject to the high rate of tax. 86 Ill. Adm. Code 130.311(c).

With respect to drugs and prescription and nonprescription medicines, the tax is imposed at the rate of 1%. 35 ILCS 120/2-10. A medicine or drug is any pill, powder, potion, salve, or other preparation for human use that purports on the label to have medicinal qualities. A written claim on the label that a product is intended to cure or treat disease, illness, injury, or pain or to mitigate the symptoms of such disease, illness, injury, or pain constitutes a medicinal claim. 86 Ill. Adm. Code 130.311(c).

Examples of medicinal claims that will qualify the product for the low rate of tax include, but are not limited to:

- A) “medicated”;
- B) “heals (a medical condition)”;
- C) “cures (a medical condition)”;
- D) “for relief (of a medical condition)”;
- E) “fights infection”;
- F) “stops pain”;
- G) “relief from poison ivy or poison oak”;
- H) “relieves itching, cracking, burning”;
- I) “a soaking aid for sprains and bruises”;
- J) “relieves muscular aches and pains”;
- K) “cures athlete’s foot”;
- L) “relieves skin irritation, chafing, heat rash, and diaper rash”;
- M) “relief from the pain of sunburn”; and
- N) “soothes pain”. 86 Ill. Adm. Code 130.311(c)(1).

The 1% tax rate is also imposed 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). 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). 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 1%. 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. ST 18-0030-GIL.

Thus, if the product at issue meets the definition of medicines or drug in 86 Ill. Adm. Code 130.311(c), it will be subject to the 1% tax rate. In the alternative, the product at issue may be considered to be food for human consumption that is to be consumed off the premises where it is sold which is also subject to the 1% tax rate.

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 A. Kowalska  
Associate Counsel

KAK:slc