

This letter provides a brief summary of when the high rate of tax for food and the low rate of tax for food apply. See 86 Ill. Adm. Code 130.310. (This is a GIL).

April 8, 2008

Dear Xxxxx:

This letter is in response to your letter dated August 10, 2007, in which you request 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:

It has been brought to our attention that the COMPANY located within the city limits of CITY, IL has possibly been charging too high of a tax rate on convenience store food items.

This location is a petroleum-based business with a convenience store. To the best of my knowledge, the convenience store does not sell any food items that are prepared on-site for immediate consumption. Additionally, this retailer does not provide facilities or seating for on-premises consumption of food.

This retailer does sell fountain soft drinks, for which they are correctly charging the higher tax rate.

I have not inventoried the store, nor have I calculated exact percentage of sales; however, after visiting the establishment, it appears that the vast majority of food items available for purchase in the convenience store area are food items that should be taxed at the lower rate, yet the store is charging 7.75% sales tax on these items.

I have discussed this information with Department of Revenue employees and I was informed to submit this information to you for your consideration.

Please call me if you have any questions.

DEPARTMENT'S RESPONSE

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate (6.25% State rate) on all food sales (including bulk or grocery type items). However, if establishments sell both food that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax may be charged on the bulk or grocery type items if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts. See 86 Ill. Adm. Code 130.310(b)(3).

The Department generally relies on the plain meaning of the term "physically partitioned" as in separated or divided by a tangible barrier. An eat-in area that is partially isolated from the general sales area of a store by the arrangement of display cases, service counters, and stub walls would qualify as "physically partitioned."

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the high rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a). Food for immediate consumption is defined in the regulation as hot food and food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. See 86 Ill. Adm. Code 130.310(b)(6). Please note, however, that you may want to periodically check our website because Section 130.310 regarding food is currently being reviewed and some changes to clarify the regulation are expected.

In addition to the information provided in this letter, you may wish to review Section 130.310 and the sales tax "Sunshine" letter rulings issued by the Department under the headings of "Food" or "Food, Drugs and Medicinal Appliances" located on the Department's internet website under the heading of "Laws/Regs/Rulings." For your information, though, we have forwarded the information you provided to our Audit Division.

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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Debra M. Boggess
Associate Counsel

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