

This letter discusses the appropriate State tax for sales of beverages including soft drinks. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

January 12, 2009

Dear Xxxxx:

This letter is in response to your letter dated September 2, 2008, 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:

As you are aware, your state provides a full or partial exemption from sales tax on food products.

Questions:

Are **noncarbonated energy drinks** classified as a food product which are exempt or subject to a reduced rate of sales tax by your state?

Are **carbonated energy drinks** classified as a food product which are exempt or subject a reduced rate of sales tax by your state?

Thank you for your assistance.

DEPARTMENT'S RESPONSE:

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax and Use Tax unless an exemption is specifically provided. Food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), drugs, medicines and medical appliances are

not taxed at the General State rate of 6.25%. These items are taxed at a lower State rate of 1% plus any applicable local taxes. See 86 Ill. Adm. Code 130.310.

A food is 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. See 86 Ill. Adm. Code 130.310(b)(1). Gross receipts from sales of food for which facilities are provided so that it can be consumed on the premises where it is sold and gross receipts from sales of food which has been prepared for immediate consumption do not qualify for the reduced rate. For example:

- A) Gross receipts from sales of food and drinks by restaurants, coffee shops, cafeterias and other establishments selling food which has been prepared for immediate consumption or which provide facilities for on-premises consumption are subject to the full rate of tax.
- B) Concession stands, snack shops and other establishments which sell food items primarily (more than 50%) in individual sized servings (such as ice cream cones, bags of popcorn, and individually served sandwiches) make sales of food for immediate consumption.
- C) Sales of all hot food and hot food products are sales of food for immediate consumption. See 86 Ill. Adm. Code 130.310(b)(2).

Delicatessens, markets, dairies and bakeries and other establishments which sell food items primarily (more than 50%) in quantities greater than individual sized servings incur the reduced rate on gross receipts from retail sales of food items. See 86 Ill. Adm. Code 130.310(b)(3).

The reduced rate does not apply to alcoholic beverages, nor soft drinks. The term "soft drinks" means any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products, or drinks containing 50% or more natural fruit or vegetable juice. Frozen concentrated fruit juice, dry powdered drink mixes, and fruit juices which are reconstituted to natural strength are not soft drinks. See 86 Ill. Adm. Code 130.310(b)(5).

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,

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