

This letter discusses the criteria used to determine the proper rate of taxation of food. See 86 Ill. Adm. Code 130.310. (This is a GIL).

December 6, 2002

Dear Xxxxx:

This letter is in response to your letter dated August 14, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, Company A, we hereby request an administrative ruling with regard to the proper Illinois sales and use tax treatment of its bottled water sales. The important facts regarding this transaction are outlined below.

### **FACTS**

Company A operates various premier restaurant chains throughout the United States. As part of its daily operation, Company A sells numerous types of bottled water to its patrons. The bottled water includes filtered water, spring water, and mineral water, in both carbonated, and non-carbonated varieties. These bottled waters are available in sizes ranging from 500 milliliters to 1 liter and are all non-flavored. Furthermore, patrons purchase water sold in bottles as a part of their dining experience as well as a part of their take out orders with the intention to consume the water off of the restaurant premises.

### **DISCUSSION**

Pursuant to Illinois Admin. Code § 130.310 (b)(2)(A), gross receipts from the 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. However, the regulation makes no specific mention of food products, which are sold without preparation in their original sealed container from the restaurant premises for on-premise or off-premise consumption.

### **REQUEST FOR ADMINISTRATIVE RULING**

In an effort to eliminate any ambiguity regarding the taxability of bottled water sold in restaurants, we respectfully request the following administrative rulings:

1. Is Company A excluded from collecting tax on filtered water sold in bottles for consumption onsite and/or offsite of the restaurant premises?
2. Is Company A excluded from collecting tax on carbonated water sold in bottles for consumption onsite and/or offsite of the restaurant premise?
3. Is Company A excluded from collecting tax on non-carbonated water sold in bottles for consumption onsite and/or offsite of the restaurant premise?
4. Is Company A excluded from collecting tax on non-flavored water sold in bottles for consumption onsite and/or offsite of the restaurant premise?
5. Is Company A excluded from collecting tax on spring water sold in bottles for consumption onsite and/or offsite of the restaurant premise?
6. Is Company A excluded from collecting tax on mineral water sold in bottles for consumption onsite and/or offsite of the restaurant premise?
7. Does the size of the container matter when determining the taxability of water sold in bottles for consumption onsite and/or offsite of the restaurant premise?

Thank you very much for your assistance with this matter. Please contact me if you have any questions.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. 35 ILCS 120/2. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3.

Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding the appropriate tax rates for food, drugs, medicines and medical appliances. As you can see at Section 130.310(b)(1), "[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." The reduced rate does not extend to soft drinks. Under Section 130.310(b)(5) "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. Under these definitions, bottled water, other than carbonated water is taxed as a food. The 1% rate for food does not extend to carbonated water since it is included as a soft drink. Please note that prepared for immediate consumption means prepared by the retailer (not items already prepared by the manufacturer and sold by the retailer).

Taxation of food at the reduced sales tax rate (1%) depends on whether the food is prepared for immediate consumption or for consumption off the premises where sold; therefore, the nature of the premises where the food is sold is a factor in determining the applicable sales tax rate. All sales by a retail establishment that provides facilities for on-premises consumption of food are subject to the high rate of tax (6.25% plus applicable local tax) unless the facility utilizes a separate means of recording and collecting receipts from food for consumption on the premises, and the area where food not for immediate consumption is sold is physically partitioned from the area of food sold for immediate consumption. See 86 Ill. Adm. Code 130.310(b)(2)(A) and (b)(3). Bottled water sold as part of a meal is always subject to the high rate of tax, no matter whether the water is carbonated or not. If there is a separate means of recording and collecting receipts from food for consumption on the premises, and the area where food not for immediate consumption is sold is physically partitioned from the area of food sold for immediate consumption, bottled water sold not for immediate consumption is subject to the low rate of tax.

Where an establishment does not provide facilities for on-site consumption, the business would still charge a high rate of tax on all food sales if a majority of the gross receipts from food resulted from food items sold in a state of preparation for immediate consumption. However, where an establishment primarily sells food (over 50%) in bulk, such establishment would incur the reduced rate on all food items, except soft drinks, food prepared for immediate consumption and alcoholic beverages, which are always taxed at the high rate.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.