

Items such as vitamins or dietary supplements are considered foods and may qualify for the low State rate of tax. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

May 15, 2009

Dear Xxxxx:

This letter is in response to your letter dated April 13, 2009, 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:

My company is developing a vitamin drink to be sold throughout the US by independent distributors using the network marketing sales channel. We expect to be in the market at the end of the third quarter of 2009. I have attached to this letter the product's label for your review.

I would appreciate knowing if this product is subject to sales tax in your state, the sales code and tax rates that apply. Please reply by US mail or by email.

DEPARTMENT'S RESPONSE:

Please review the Department's regulation at 86 Ill. Adm. Code 130.310, regarding the appropriate tax rates for food, drugs, medicines and medical appliances. As you can see from the regulation, food that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) is taxed at the rate of 1% plus applicable local taxes. Food is defined 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. Products that do not meet the appropriate definitions of food, drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and that purports on the label to have medicinal qualities. Therefore, if vitamins, food supplements or meal replacement drink mixes are intended by the manufacturer 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 tax.

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 drugs, however, such items would be considered to be food subject to subsection (b) of 86 Ill. Adm. Code 130.310.

The Department's website contains a Tax Rate Finder that allows the user to select a jurisdiction and find local sales tax rates.

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,

Richard S. Wolters
Associate Counsel

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