

This letter discusses the State tax rates applicable to sales of food, drugs and medical appliances. See 86 Ill. Adm. Code 130.310 and 130.311. (This is a GIL.)

March 29, 2013

Dear:

This letter is in response to your letter dated October 9, 2012, 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](http://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:

COMPANY requests guidance on behalf of our client (“Retailer”) with regards to the application of the Retailers’ Occupational Tax to the products listed below. Retailer operates business locations throughout Illinois. For convenience, enclosed within this request is an appendix of the front and back view of each item’s product label.

**OTC/Dietary Supplement/Food** – Are the following products dietary supplements subject to the general merchandise rate of 6.25 percent or are the products foods or OTC medications taxed at a reduced rate of 1 percent under Ill. Admin. Code §130.311(a)?

1. **Glucose Tablets** – This product contains a Nutrition Facts Panel. (Dex-4 Image)
2. **Metamucil Laxative** – This product contains both an FDA Drug Facts panel and a supplemental facts panel. (Image 12606)
3. **Coconut Water/Juice**
  - Zico Coconut Water – 100% Coconut Water. Product contains no added sweetener, but does contain natural sugar. (Image 7439)
  - Zico Chocolate Coconut Water – 100 % Coconut Water. Product contains added cane sugar and cocoa. (Image 99921)
  - Amy & Brian’s Coconut Juice – “100% Juice” on label. Product is unsweetened, with no added sweeteners, but does contain natural sugars. (Image 7031)
4. **Pedialyte**
  - Flavored Pedialyte – Product has no FDA Drug Facts panel, Supplement Facts panel, or Nutrition Facts panel. (Image 2584)
  - Unflavored Pedialyte – Product has no FDA Drug Facts panel, Supplement Facts panel, or Nutrition Facts panel. (Image 2585)

- Pedialyte Popsicle – Product has no FDA Drug Facts pane, Supplement Facts panel, or Nutrition Facts panel. (Image 2591)
- Powdered Pedialyte – Product has no FDA Drug Facts panel, Supplement Facts panel, or Nutrition Facts panel. (Image 2598)

**OTC/Medical/Personal Care** – Are the following items OTC products taxed at a reduced rate under Ill. Admin. Code §130.311(a), or are they grooming/hygiene products taxed at general merchandise rate of 6.25 percent?

1. **Gold Bond Medicated Powder** – (Image 4043)
2. **Saline Nasal Washes** – (Images 762, 767, and 768)
3. **Denture Products** – (Image 2118 and 2119)
4. **Pregnancy Prevention Products**
  - Contraceptive Gel – Product has an FDA Drug Facts panel and contains an applicator. (Image 12930)
  - Contraceptive Pill (e.g. Morning after Pill) – Product has an FDA Drug Facts panel. Assume for taxability purposes that this product is sold over-the-counter to an individual over the age of 17. (Image 12932)
  - Contraceptive Film – Product has an FDA Drug Facts Panel. (Image 12929)
  - Contraceptive Sponge – Product has an FDA Drug Facts panel. (Image 12931)
5. **Rogaine** – Product has an FDA Drugs Facts panel. (Image 4884)

**Medical Equipment** – Are the following products subject to the reduced 1 percent tax rate under Ill. Admin. Code §130.311(a)?

1. **Lancets for Blood Testing** – (Image 12388)
2. **Diabetic Blood Test Strips** – (Image 12303)
3. **Home Glucose Meters** – (Image 12285)
4. **Lancing Devices** – (Image 799507)

**Miscellaneous**

1. **Blue Rhino (Propane)** – Are the following products subject to tax? If taxable, what is the tax base?
  - Blue Rhino pre-filled 20 lb. tank – Assume that the customer purchases the tank/propane for \$50 without exchanging another propane tank.
  - Blue Rhino pre-filled 20lb. tank – Assume customer purchases the propane for \$20, and exchanges an empty tank at the time of purchase.
2. **2012 Entertainment Book** – Is this product a nontaxable coupon or certificate book? (Image 2012 Entertainment Book)

COMPANY respectfully requests sales tax determinations and relevant authorities on behalf of our client, for the products listed above. If you have any questions or concerns, please contact me at X.

**DEPARTMENT'S RESPONSE:**

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any

kind of tangible personal property that is purchased anywhere at retail from a retailer. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101.

The Department's regulation regarding the appropriate tax rates for food can be found at 86 Ill. Adm. Code 130.310. Food that is to be consumed off the premises where it is sold (other than alcoholic beverages, candy, soft drinks, and food that has been prepared for immediate consumption) is taxed at the State rate of 1% plus applicable local taxes rather than the 6.25% general State merchandise rate. 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. As you can see in the regulation, "soft drinks" mean non-alcoholic beverages that contain natural or artificial sweeteners; but "soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume.

Please see the Department's regulation at 86 Ill. Adm. Code Section 130.311, which is its regulations governing Drugs, Medicines, Medical Appliances, and Grooming and Hygiene Products. Those products that qualify as food, drugs, medicines and medical appliances are taxed at a lower State rate of 1% plus any applicable local taxes. Those items that do not qualify for the low rate of tax are taxed at the general merchandise rate of 6.25% plus applicable local taxes.

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. See Section 130.311 for examples of medicinal claims. Examples of qualifying products include prescription drugs or medicines and nonprescription drugs or medicines such as aspirin or other pain relievers that purport on the label to have medicinal qualities. Since September 1, 2009, the term "nonprescription medicines and drugs" does not include grooming and hygiene products. Grooming and hygiene products include, but are not limited to, soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, unless those products are available by prescription only. If an item is a nonprescription grooming and hygiene product, it will be taxed at the State 6.25% general merchandise rate regardless of any medicinal claims made on the product's label.

A medical appliance is an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the human body. Included in the exemption as medical appliances are such items as artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines (including the dialyzer). Corrective medical appliances such as hearing aids, eyeglasses and contact lenses qualify for exemption. Moreover, generally, home glucose monitors, test strips and related supplies used to treat human diabetes also qualify for the 1% State rate of tax. See subsection (d) of 86 Ill. Adm. Code 130.310.

When a retailer sells a pre-filled tank of propane and the customer is not exchanging an empty propane tank, the sale is subject to Retailers' Occupation Tax on the selling price of the filled tank (for example, \$50). When a customer brings in his own empty tank and asks the retailer to refill his tank, the sale is subject to Retailers' Occupation Tax on the selling price of the gas used to fill the customer's tank (for example, \$20). When a customer exchanges his empty tank for a pre-filled tank of propane, the sale is subject to Retailers' Occupation Tax on the selling price of the tank and propane, generally, minus a trade-in credit for the exchanged tank.

Finally, the sale of coupon books or gift certificates is not subject to Illinois sales tax. Coupons and gift certificates represent an intangible right to purchase merchandise at some future time and are not subject to Illinois sales tax. However, if a vendor is reimbursed in full or in part, for the value of the coupon or gift certificate, the reimbursement amount will be part of the vendor's gross receipts that are subject to sales tax. See 86 Ill. Adm. Code 130.2125(b)(2).

You can determine the tax status of the products listed in your letter by applying the principles set forth in the Regulations cited above. You may also want to review some of the letter rulings provided on our website regarding these products.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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Associate Counsel