

This letter concerns the low 1% State rate of tax applicable to food, drugs and medical appliances. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

July 13, 2007

Dear Xxxxx:

This letter is in response to your letter dated January 12, 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.ILTAX.com 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:

ABC sells nutritional, dietary, and skin care products through a multi-level network of independent distributors. ABC is considered an 'MLM' or multi-level marketer. Our physical location is in CITY/STATE. ABC charges sales tax based upon the address to which we ship and based upon full retail price. ABC files one consolidated state sales/excise tax return in lieu of each independent distributor filing a separate return with your state.

We are launching a new product in February 2007. The new product is a weight loss accelerator capsule. I have included the nutritional panel for this new product to assist in the ruling.

Please send the letter ruling or binding opinion to my attention at the address provided. If you need additional information, please contact me.

Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

All sales of food, drugs, and medical appliances are subject to tax under the Retailers' Occupation Tax Act. Please see 86 Ill. Adm. Code 130.310, which is the Department's regulation for "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sales of food, drugs, and medical appliances may qualify for a lower (1%) State rate of tax.

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. See subsection (b)(1) of Section 130.310. Food for human consumption that 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), qualifies for the lower State rate of tax.

A medicine or drug is defined as “any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities.” See subsection (c)(1) of Section 130.310.

A medical appliance is defined as an item intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. Examples of items that qualify are artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines. Corrective medical appliances such as hearing aids, eyeglasses and contact lenses are also examples of qualifying items. Generally, medical tools, devices and equipment used for diagnostic, rehabilitative and treatment purposes do not qualify for the reduced rate of tax for medical appliances as such items, while being used for the treatment of patients, are not directly substituting for a malfunctioning part of the body. See subsection (c)(2) of Section 130.310.

The information attached to your letter states that the product is weight loss accelerator capsule intended for ingestion by humans. This product does not appear to qualify as a medicine or drug, but may qualify as a food subject to the lower State rate of tax.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com 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,

Terry D. Charlton
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TDC:msk