

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)

October 31, 2008

Dear Xxxxx:

This letter is in response to your letter dated September 12, 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:

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 such as Amway. 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 November 2008. This new product is a dietary supplement formulated to help control blood sugar levels. I have included a copy of the product label 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:

I direct your attention to the Department's regulation regarding the appropriate tax rates to apply to the sale of food, drugs and medicines. 86 Ill. Adm. Code 130.310 (Food, Drugs, Medicines

and Medical Appliances). 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 may be considered to be drugs and are taxed at the low rate of tax. Vitamins, food supplements or meal replacement drink mixes that do not make medicinal claims, would be generally be considered to be food.

Please note, however, that Section 130.310 regarding food is currently being reviewed and some changes to the regulation are expected.

You mention in your letter that ABC files one consolidated state sales tax return in lieu of each independent distributor filing a separate return with your state. You may wish to review the Department's regulation at 86 Ill. Adm. Code 130.550 "Filing of Returns for Retailers by Suppliers Under Certain Circumstances." This regulation sets out the Department's policy governing agency agreements. Under an agency agreement, a manufacturer or wholesaler whose products are sold by numerous distributors in Illinois assumes the responsibility of collecting and remitting Retailers' Occupation Tax on behalf of all sales made by distributors. The Department utilizes a standard "Agency Agreement" with wholesalers and manufacturers that wish to enter into such arrangements.

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

RSW:mks