

This letter discusses tax on soft drinks. See Public Acts 96-34, 96-37, and 96-38 and 35 ILCS 120/2-10. (This is a GIL.)

October 16, 2009

Dear Xxxxx:

This letter is in response to your letter dated September 30, 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:

This letter is to request a formal written opinion on the taxability of Pedialyte products. Specifically, if Pedialyte subject to the reduced rate of sales tax as a food/OTC medication or the full rate of sales tax as flavored water/soft drink. The facts are as follows:

Illinois Department of Revenue Regulation Title 86, Ch. 1, Part 130, Sect. 130.310(a) reads:

General. With respect to food for human consumption which 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), and prescription and non-prescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purpose of rendering it usable by a disabled persons, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use, the tax is imposed at the rate of 1%. (Section 2-10 of the Act)

Illinois Department of Revenue Regulation Title 86, Ch. 1, Part 130, Sect. 130.310(b)(1) defines 'food:'

- b) Food
- 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.

Illinois Department of Revenue Regulation Title 86, Ch. 1, Part 130, Sect. 130.310(b)(5) defines 'soft drink:'

5) The reduced rate does not extend to soft drinks. Soft drinks will be taxed at the State sales tax rate of 6.25%. *The term '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, noncarbonated water, infant formula, milk or milk products as defined in Section 3(a)(2) and (4) of the Grade A Pasturized [sic] Milk and Milk Products Act [410 ILCS 635], or drinks containing 50% or more natural fruit or vegetable juice. (Section 2-10 of the Act) Frozen concentrated fruit juice, dry powdered drink mixes, and fruit juices that are reconstituted to natural strength are not soft drinks.*

Illinois Department of Revenue Regulation Title 86, Ch. 1, Part 130, Sect. 130.310(c)(1) defines 'medicines:'

c) Medicines and Medical Appliances

1) 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. Medicines prescribed by veterinarians for animals are subject to the high rate of tax. 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.

ABC is the company that distributes Pedialyte products. The product description is as follows on the ABC Nutrition website regarding Pedialyte:

To quickly replace fluids and electrolytes lost during diarrhea and vomiting to help prevent dehydration in infants and children; for maintenance of water and electrolytes following corrective parenteral therapy for diarrhea. PEDIALYTE is designed to promote fluid absorption more effectively than common household beverages.

While this product is to be used primarily for the relief of diarrhea and vomiting symptoms, it is also purchased as a general thirst-quenching beverage, much like Gatorade, Powerade and similar products.

Based on the ingredients and intended use of these products, we respectfully request your help in establishing the appropriate rate of Illinois sales tax of Pedialyte products.

DEPARTMENT'S RESPONSE:

Beginning September 1, 2009, "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. (See Public Acts 96-34, 96-37, and 96-38 and 35 ILCS 120/2-10.)

According to the Pedialyte website, the product contains sugars and sweeteners.

“Pedialyte contains the quantity and ratio of sugars (dextrose and fructose) and minerals (electrolytes) recommended by the American Academy of Pediatrics. This precise balance of sugar and electrolytes makes Pedialyte effective in the management and treatment of diarrhea with or without vomiting.

Without added sweeteners, Pedialyte is not sweet enough for many children to drink. Adding sugar (sucrose) to Pedialyte may make diarrhea worse by drawing water into the intestine, increasing the risk of dehydration. Adding sweeteners like ace K (acesulfame potassium) and sucralose makes Pedialyte taste good without the risks of adding sugar (sucrose). When Pedialyte tastes good, children drink enough of it to maintain hydration and replace needed minerals when they are sick.”
Pedialyte.com/faq.aspx.

Because Pedialyte contains sweeteners, it appears to fall within the definition of “soft drinks” unless it also contains milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume. Your letter and the manufacturer’s website do not contain a complete list of ingredients to enable the Department to provide a definitive answer to your inquiry.

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:mzk