

This letter discusses how sales of food can be subject to either low (1%) or general merchandise (6.25%) State tax rates under the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

January 8, 2009

Dear Xxxxx:

This letter is in response to your letter dated August 18, 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:

Since increased Sales Tax, our customer complains
My Store sales Tax is too high
I charge 9.75 for all /food including water and sandwiches
Your St 1 form shows Food Drug and medical appliances is .0225
Please advice me what is correct percentage for sales tax in Schaumburg, IL in Cook County.

DEPARTMENT'S RESPONSE:

For your information, we have enclosed a copy of 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 and drugs can be subject to either low (1%) or general merchandise (6.25%) State tax rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made. In the Cook County portion of Schaumburg the current combined (State and Department-administered local) low rate is 2.25% and the current combined (State and Department-administered local) general merchandise rate is 10%. Please note that the Department is currently reviewing this regulation and may propose changes to it. Consequently, we advise you to watch our website for rulemaking developments.

The following products are always taxed at the general merchandise rate (6.25% State plus Department administered local):

- food prepared for immediate consumption
- alcoholic beverages
- soft drinks

Other than the items listed above which are always taxed at the general merchandise rate, the regulation provides that the rate at which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the general merchandise rate (6.25% State rate plus any applicable local rate) on all food sales (including bulk or grocery type items). However, if establishments sell both food that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax may be charged on the bulk or grocery type items if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts. See 86 Ill. Adm. Code 130.310(b)(3).

The Department generally relies on the plain meaning of the term "physically partitioned," as in, separated or divided by a tangible barrier. An eat-in area that is partially isolated from the general sales area of a store by the arrangement of display cases, service counters, and stub walls would qualify as "physically partitioned."

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the general merchandise rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a). "Food for immediate consumption" is defined in the regulation as hot food and food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. See 86 Ill. Adm. Code 130.310(b)(6).

Prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. Please see the regulation enclosed for more information on these items.

In addition to the information provided in this letter, you may wish to review Section 130.310 and the sales tax "Sunshine" letter rulings issued by the Department under the headings of "Food" or "Food, Drugs and Medicinal Appliances" located on the Department's internet website under the heading of "Laws/Regs/Rulings."

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.

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk
Enc.