

The new definition of “soft drinks” that is effective September 1, 2009 does not include beverage powders or fruit flavored soft drink mix concentrates. See 35 ILCS 120/2-10. (This is a GIL.)

September 2, 2009

Dear Xxxxx:

This letter is in response to your letter dated July 22, 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:

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

Please provide a General Information Letter (GIL) advising if our DRINK falls within the state’s definition of ‘Soft Drinks’ and thus becomes fully taxable as of September 1, 2009. I have included a copy of the product label to assist in the ruling.

Please send the GIL to my attention at the address provided. If you need additional information, please contact me by phone.

Thank you for your assistance in this matter.

DEPARTMENT’S RESPONSE:

Until September 1, 2009, 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; but "soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products as defined in the Grade A Pasteurized Milk and Milk Products Act, or drinks containing 50% or more natural fruit or vegetable juice.

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. The definition of "soft drinks" does not include beverage powders or fruit flavored soft drink mix concentrates.

The Department's regulations currently do not reflect this new definition for "soft drinks." However, the Department plans to amend the regulations to incorporate this new definition.

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,

Debra M. Boggess
Associate Counsel

DMB:msk