

This letter provides a brief summary of when the high rate of tax for food and the low rate of tax for food apply. See 86 Ill. Adm. Code 130.310. (This is a GIL).

December 21, 2005

Dear Xxxxx:

This letter is in response to your letter dated August 8, 2005, 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 requests a ruling on the following facts:

Facts

ABC will operate a grocery store in CITY, Illinois. The store will sell groceries, general merchandise, hot food, and food customarily offered by delis and bakeries, including some food prepared on site and sold in single sized servings. The store will also include a coffee/pastry bar with seating. However, the majority of the sales from the store will be in quantities greater than individual sized servings. Thus, the store will sell some items subject to the full rate of Retailers' Occupation Tax (sales tax) and some items subject to the reduced rate of sales tax.

The store's cash register system can tax the various items sold at the different applicable rates.

The sit-down coffee/pastry bar area is partially isolated from the general sales area of the store by the arrangement of display cases, service counters, and stub walls. The design, appearance, and functionality of the area is such that the customer perceives it to be significantly different from the surrounding sales floor.

Ruling Request

Under the fact pattern stated above, is the coffee/pastry bar area 'physically partitioned' as referenced by Illinois Administrative Code 130.310(b)(3)?

Please provide the rationale for the conclusion, including cites to supporting authority, including judicial decisions, statutes, regulations, or departmental directives.

If you have any questions, please contact me directly.

DEPARTMENT'S RESPONSE

The manner in 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 high rate (6.25% State 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 high 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 hot foods, 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). Please note, however, that Section 130.310 regarding food is currently being reviewed and some changes to the regulation are expected.

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.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,

Martha P. Mote
Associate Counsel

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