

This letter discusses the applicable sales tax rates for food. *See* 86 Ill. Adm. Code 130.310. (This is a GIL.)

April 4, 2014

Dear Xxxx:

This letter is in response to your letter dated January 7, 2014, 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:

I am writing to request your opinion as to the sales tax rate applicable concerning certain food items sold by a food retailer with limited premise space.

Statement of Facts & Analysis

Our client has a large corporate location with a small area from which employees and visitors can purchase food and drink items. There is a variety of packaged food, as well as, heated food and salads that can be boxed for “to-go” consumption. The area surrounding the food sales only contains a few tables. The majority of employees and visitors take their food “to-go” for consumption at their desk, a conference room, meeting area, or outside the building.

Per Section 130.310, there appear to be several factors that determine which sales tax rate (low or high) should be charged when selling food items. Following are the responses to the factors.

1. The retailer has a small eating premise area. The premise area can seat 15-20 people; the building can hold close to 2,000 employees/visitors on a given day. Therefore, the premise area is inconsequential to being viewed as a premise area for this food retailer.
2. The retailer has the information available to segregate receipts from sales for both high & low rate foods. The retailer can easily track all meals eaten in the small premise area based on trays at checkout.
3. The retailer has the information and system to collect the high rate on all hot foods, individual/custom order sandwiches, salad bar items, and applicable individual order drinks, etc.

Given the above information, we feel that the food retailer should be collecting both high and low rates based on the customer's situation. In summary, all food eaten in the small premise area should be taxed at the high rate, irrelevant of food type. All food meeting the definition of "immediate consumption" should be taxed at the high rate, irrelevant of where eaten. All other items, unless specifically taxed at a high rate for other purposes, would be taxed at the reduced food rate of 1%.

We appreciate your assistance with this request. Contact me if you have any additional questions for which you need information to respond to this request.

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 grocery type items). However, if establishments sell both food that has been prepared for immediate consumption and grocery type items and also provide facilities for on-premises consumption, the lower rate of tax (1%) may be charged on the grocery type items (other than alcoholic beverages, candy, soft drinks, and food that has been prepared for immediate consumption) 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)(1).

Food for immediate consumption is defined in the regulation as 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(c)(2). Foods sold in a restaurant or cafeteria are typically considered prepared for immediate consumption. See 130.310(d)(4)(C). This would include food that can be boxed up "to go" even though it will be eaten off the premises because it is prepared for immediate consumption. When a retailer provides on premises seating the low rate only applies to certain foods if the area for on premises consumption is physically separated or otherwise distinguishable from the area where food not for immediate consumption is sold; and the retailer utilizes a separate means of recording and accounting for collection of receipts from the sales of food prepared for immediate consumption and the sales of food that are not prepared for immediate consumption. This can be accomplished simply by using a cash register that separately identifies high rate and low rate sales or by using separate registers for high rate and low rate sales. We cannot say whether this scenario applies to you because we cannot determine from your letter whether you sell food that qualifies for low rate, and we do not know the physical layout of the retailer. Assuming you meet these criteria, you would be required to collect high rate on some foods and low rate on qualifying foods. You are correct that hot foods are always taxed at the high rate (6.25% State rate). In addition, sandwiches made to order and salad from salad bars are considered prepared for immediate consumption.

In sum, if the area from which you sell food has seating for consumption of food, even if the area is not large, we presume that all of your sales are taxable at the high rate. If you have a physical separation between the dining area and the area where you sell food not for immediate consumption and you have a separate means of recording and accounting the sales receipts of high and low rate foods, the low rate will apply to qualifying foods that are not prepared for immediate consumption.

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Please refer to 130.310(c)(2)(B) for a list of foods that typically are not considered “food prepared for immediate consumption.”

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,

Cara Bishop
Associate Counsel

CB:ikm