

This letter discusses food products made from industrial hemp. 86 Ill. Adm. Code 130.310.
(This is a GIL.)

September 30, 2020

RE: Request Taxability of Hemp PRODUCTS

Dear Xxxx:

This letter is in response to your letter dated May 30, 2019, in which you requested 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, with one minor exception. Orders which have been certified for personal usage by our distributors and are less than \$\$\$ retail value are taxed based upon wholesale pricing. COMPANY files one consolidated state sales/excise tax return in lieu of each independent distributor filing a separate return with your state.

Within the next months, COMPANY will be rolling out new products containing hemp extracts. Two of the products are balms containing differing concentrations of hemp extract and that are intended for topical application. One full spectrum hemp extract and 2 hemp extract isolate products are food-grade oils, which are administered via a tincture dropper under the tongue. Hemp extract is growing in popularity and use as a dietary supplement. Please note that hemp extract is being sourced from industrial

hemp, as defined by the Agricultural Improvement Act of December 2018, containing less than 0.3% THC.

We are seeking assurance both the Hemp Balm and the Hemp Extract Drops are taxable per state regulations. If a regulation would apply deeming these products not subject to the state sales tax, please provide applicable guidance on the sales tax classification. I have included copies of the approved labels for your convenience.

Thank you for your assistance.

DEPARTMENT'S RESPONSE:

The Department's regulation at 86 Ill. Adm. Code 130.310 discusses the appropriate tax rates for food, soft drinks and candy. Food that is to be consumed off the premises where it is sold (other than alcoholic beverages, food consisting of or infused with adult use cannabis, soft drinks, candy and food that has been prepared for immediate consumption) is taxed at the rate of 1% plus applicable local taxes. Food is defined as 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. Adult use cannabis is defined as cannabis subject to tax under the Cannabis Cultivation Privilege Tax Law and the Cannabis Purchaser Excise Tax Law and does not include cannabis subject to tax under the Compassionate Use of Medical Cannabis Program Act. 86 Ill. Adm Code 130.310(c)(4). [ILCS 130]. However, cannabis as defined by the Cannabis Cultivation Privilege Tax Law and the Cannabis Purchaser Excise Tax Law excludes industrial hemp as defined and authorized under the Industrial Hemp Act (505 ILCS 5). 86 Ill. Adm. Code 423.105.

Products that do not meet the appropriate definition of food or that are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. All adult use cannabis (e.g., cannabis flower, concentrate, cannabis-infused products) is taxed at the State rate of 6.25%. 86 Ill. Adm. Code 130.310(d)(8).

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation for human use and that purports on the label to have medicinal qualities. See 86 Ill. Adm. Code 130.311. Therefore, if vitamins, food supplements or meal replacement drink mixes are for human use and purport on the label to have medicinal qualities, such items are considered to be drugs and are taxed at the low rate of tax. Since not many vitamins, food supplements or meal replacement drink mixes are likely to make medicinal claims, they would not qualify as a medicine or drug, however, such items would be considered to be food subject to 86 Ill. Adm. Code 130.310 at taxed at the 1% rate.

The Department takes no position whether the labels on the products you describe make medicinal claims and should be taxed as medicines or drugs. However, if the products are made from industrial hemp and sold primarily for internal human consumption, they would be considered as food and taxed at the rate of 1%, plus applicable local taxes.

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:bkl