

ST 25-0043-GIL 08/05/2025 FOOD

Food items for immediate consumption are subject to the higher tax rate. See 86 Ill. Adm. Code 130.310. (This is a GIL).

August 5, 2025

NAME

TITLE

CITY

EMAIL

Dear EMAIL:

This letter is in response to your email dated July 21, 2025, 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 <https://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 the TITLE for the CITY. My primary duty is to perform audits to ensure businesses are in compliance with our City ordinances.

I am currently auditing COMPANY. COMPANY is categorized as a grocer and therefore, charges 1% tax on the sale of their pizzas since they are not ready to consume once purchased. They questioned what rate they should be charging on their salads.

On July 7, 2025, I contacted one of your agents with a question regarding the tax COMPANY should be charging their customers on the sale of their cold salads. The salads listed on their menu are pre-made and stored in a sealed container in the refrigerator. The “create your own” salads are made fresh after the order has been place [sic].

I spoke with IDOR agent, NAME1, badge #XXXXX, who consulted with his superior NAME2. I was told that any salad that is customized should be taxed at the higher tax rate.

Page 3 of the IDOR Administrative Code Title 86 states, "Food prepared for immediate consumption" does not include cold salads. Page 4 states, "If a retailer does not provide seating or facilities for on-premises consumption of food, then the low rate of tax will be applied to all food items except for "food prepared for immediate consumption."

COMPANY's does not have seating or facilities for on-premises consumption. They do not provide utensils, plates, or napkins.

Given this information, should any of their cold salads be taxed at the higher rate? The way the Administrative Code reads, all cold salads are taxed at the lower tax rate.

This information is vital to the conclusion of my audit findings and also for future CITY, Food & Beverage tax payments.

Thank you in advance for your assistance.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

The Department's regulation governing food is found at Section 130.310 ("Food, Soft Drinks and Candy"). Food can be taxed at either the State general merchandise, or "high" rate (6.25%), or a preferential low rate of 1% (plus any applicable local taxes). As Section 130.310 explains, the applicable tax rate depends upon several factors.

The manner in which food is taxed depends upon two distinct factors that must both be considered in determining if food is prepared for immediate consumption or if food is prepared for consumption off the premises where sold:

1. The first factor is whether the retailer selling the food provides premises for consumption of food.
2. The second factor is the nature of the food item being sold.

86 Ill. Adm. Code 130.310(b).

As to the first factor, if retailers provide facilities for the on-premises consumption of food, a presumption is created that all sales of food are taxable at the higher rate. However, this presumption can be rebutted if the following two criteria are demonstrated:

1. The area for on-premises consumption is physically separated or otherwise distinguishable from the area where food not for immediate consumption is sold; and
2. The retailer utilizes a means of recording and accounting for collection of receipts from the sales of food prepared for immediate consumption (high rate) and the sales of food that are not prepared for immediate consumption (low rate).

86 Ill. Adm. Code 130.310(b) and (d).

As to the second factor, the nature of the food item being sold, certain items are always taxable at the high rate, such as candy, soft drinks and “food prepared for immediate consumption.” The latter term is explained in greater detail at subsection (c)(2)(A)(i) through (iv) of the regulation. Examples include, but are not limited to, all hot foods, sandwiches prepared to the individual order of a customer, and salad bars where a customer can prepare his or her own salad (both hot and cold). Food that is not considered “food prepared for immediate consumption” is explained in greater detail at subsection (c)(2)(B)(i) through (iv) of the regulation. Examples include, but are not limited to, doughnuts, cookies, bagels, or other bakery items prepared by a retailer and sold either individually or in another quantity selected by the customer, provided they are for consumption off the premises where sold, and cold salads, jellios, stuffed vegetables or fruits sold by weight or by quart, pint, or other quantity by a retailer. Similar to a sandwich, a salad that is prepared to the individual order of a customer will also be subject to the high rate of tax. Generally, cold salads refer to prepared salads, including deli items such a potato salad, pasta salad, or bean salad.

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I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at 800-732-8866.

Very truly yours,

Kimberly Rossini
Associate Counsel

KAR:slc