

This letter discusses the State tax rate applicable to sales of food. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

June 21, 2022

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated May 20, 2022, 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:

I am starting up a home baking business under the Cottage Food Law. I have a question on the tax rate of a product containing flour vs a product that does not. My food sold from my house is not for immediate consumption. It will be either, pick it up and leave or I may deliver it to their address. Plus, I plan to offer shipping within the state of Illinois.

My understanding is the tax rate for cookies, cakes, pies, breads, and such that contain flour are at a 1% tax rate but 1) what about products that do not contain flour, such as fudge? 2) What tax rate would be fudge or no bake cookies (no flour used)? 3) Then, if the fudge had pretzels in it or crumpled cookies, what would that tax rate be?

Would the tax rate change if I were selling elsewhere, like a farmers' markets, events, venues and or a canopy set up outside of businesses?

I look forward to getting your responses so that I can be sure to do things correctly

DEPARTMENT'S RESPONSE:

As an initial matter, the Department cannot provide any information relating to 410 ILCS 625/4, commonly known as the Cottage Food Law.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, 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 35 ILCS 105/3; 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 retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

Please see the Department's Regulation entitled "Food, Soft Drinks and Candy" at 86 Ill. Adm. Code 130.310 which can be found on the Department's website. As you can see in the regulation, food for human consumption 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 lower state tax rate of 1% plus applicable local taxes.

In contrast, candy, soft drinks and food that has been prepared for immediate consumption are taxed at the higher State sales tax rate of 6.25% plus applicable local taxes. The regulation defines "food" 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. 86 Ill. Adm. Code 130(c)(1).

The term "soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. "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. 35 ILCS 120/2-10; 86 Ill. Adm. Code 130.310(d)(6)(B). Thus, if a beverage contains a natural or artificial sweetener but also contains milk or milk products, soy, rice or similar milk substitutes, or greater than 50% of vegetable or fruit juice by volume, it will not fall within the definition of "soft drink" but, rather, it will fall within the definition of food.

“Candy” is defined as a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” does not include any preparation that contains flour or requires refrigeration. Thus, if a product contains flour or requires refrigeration, it would not be considered “candy” even if it meets all the other elements of the definition.

It may also be helpful to review 86 Ill. Adm. Code 130.530 Returns Covering More Than One Location Under Same Registration -- Separate Returns for Separately Registered Locations, and Section 130.2045 Retailers on Premises of the Illinois State Fair, County Fairs, Art Shows, Flea Markets and the Like

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:rkn