

This letter discusses the State tax rate applicable to the sales of food. 35 ILCS 120/2- 10; 86 Ill. Adm. Code 130.310, 311. (This is a GIL.)
September 12, 2025

NAME
TITLE
COMPANY
ADDRESS

Dear NAME:

This letter is in response to your letter received August 4, 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:

Please review the attached product labels for the items listed below and provide us with a determination of sales taxability in your state.

Products: PRODUCT1
PRODUCT2
PRODUCT3
PRODUCT4

I will be happy to provide additional information if needed. Thank you for your prompt attention to this matter.

DEPARTMENT’S RESPONSE:

The Retailers’ Occupation Tax Act (“Act”) imposes a tax rate of 6.25% on gross receipts from sales of tangible personal property made in the course of business, unless otherwise specified in Section 2-10 of the Act. 35 ILCS 120/2-10. With respect to 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, and food that has been prepared for immediate consumption), the tax is imposed at the rate of 1%. 35 ILCS 120/2-10; 86 Ill. Adm. Code 130.310(a). Prescription and nonprescription medicines, and drugs are also taxed at the rate of 1%. 35 ILCS 120/2-10; 86 Ill. Adm. Code 130.311(a).

It should be noted that, beginning on January 1, 2026, 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 exempt from occupation, use, service occupation and service use taxes imposed by the State. Public Act 103-0781 as codified in 35 ILCS 120/2-5(49), 2-10; 35 ILCS 105/3-5(44), 3-10; 35 ILCS 110/3-5(36), 3-10; 35 ILCS 115/3-5(37), 3-10. However, under Public Act 103-0781, beginning on January 1, 2026, municipalities and counties may impose their own local grocery tax by ordinance. If imposed, the tax shall be at the rate of 1%. “Groceries” has the same meaning as “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)”. 65 ILCS 5/8-11-24; 55 ILCS 5/5-1006.9.

A medicine or drug is any pill, powder, potion, salve, or other preparation for human use that purports on the label to have medicinal qualities. A written claim on the label that a product is intended to cure or treat disease, illness, injury, or pain or to mitigate the symptoms of such disease, illness, injury, or pain constitutes a medicinal claim. 86 Ill. Adm. Code 130.311(c).

The Department’s 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 130.310(c)(1).

The term “soft drinks” means non-alcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” does 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 would not fall within the definition of “soft drink” but, rather, it would fall within the definition of food.

“Food for human consumption that is to be consumed off the premises where it is sold” includes all food sold through a vending machine, except soft drinks, candy, and food

products that are dispensed hot from a vending machine, regardless of the location of the vending machine. "Food for human consumption that is to be consumed off the premises where it is sold" does not include candy. 35 ILCS 120/2-10.

"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. 35 ILCS 120/2-10; 86 Ill. Adm. Code 130.310(d)(7)(A). 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.

The products at issue in your inquiry appear to be a dietary supplement powder contained in stick packs, sachets or capsules. The labels for these products do not claim any medicinal qualities. Thus, these products would qualify as food, and not as medicine or drugs. Further, according to the label, the powder in the sachets is to be mixed with water. Although, it is not entirely clear from the letter or the label, it appears that the powder in the stick packs may also be mixed with liquid. Beverage powders and dry mixes are not considered soft drinks. 86 Ill. Adm. Code 130.310(d)(6)(E)(i). Powdered hot chocolate cocoa mix and other drink mixes are not considered candy. 86 Ill. Adm. Code 130.310(d)(7)(G)(vi). Therefore, the powder contained in stick packs or sachets would not be a soft drink or candy. None of the products appear to be for immediate consumption. Based on this information, it appears that these products may qualify for the lower 1% rate of tax on food.

However, it should be noted that the tax rate may be impacted by the nature of the selling establishment. 86 Ill. Adm. Code 130.310(b). If a retailer selling food provides premises for consumption of food, a rebuttable presumption is created that all sales of food by that retailer are considered to be prepared for immediate consumption and subject to tax at the high rate. As a result of this presumption, even bulk food could potentially be taxable at the high rate. However, this presumption is rebutted if a retailer demonstrates that:

- A) the area for on-premises consumption is physically separated or otherwise distinguishable from the area where food not for immediate consumption is sold; and
- B) the retailer has a separate means of recording and accounting for collection of receipts from sales of both high and low-rate foods. For purposes of Section 130.310(b)(1)(B), the phrase "separate means of recording and accounting for collection of receipts" includes cash registers that separately identify high rate and low-rate sales, separate cash registers, and any other methods by which the tax on high and low rate sales are recorded at the time of collection. 86 Ill. Adm. Code 130.310(b)(1).

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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,

Katarzyna Kowalska
Associate Counsel

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