

STATE OF COLORADO

DEPARTMENT OF REVENUE
State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
Phone (303) 866-3091
FAX (303) 866-2400



Bill Ritter, Jr.
Governor

Roxanne Huber
Executive Director

GIL-2009-015

July 7, 2009

XXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Re: dietary supplements

Dear XXXXXXXXXXXXX,

This letter is in response to the letter you submitted on behalf of XXXXX ("Company") regarding the taxability of XXXXX and in which you request a letter ruling or binding opinion.

The Department issues general information letters and private letter rulings. A general information letter provides a general overview of the applicable tax law, does not provide a specific determination, and is not binding on the department. A private letter ruling is a determination of the applicability of tax to a specific set of circumstances and is binding in the department. A party requesting a private letter ruling must provide certain information and remit a fee. For more information about general information letters and private letter rulings, please refer to the Department's regulation 24-35-103.5, C.R.S., which is available on our web site at: www.colorado.gov/revenue/tax.

Although you request a ruling or binding opinion, I will initially treat your request as one for a general information letter because the request does not contain the information or fee necessary for a private letter ruling. You may resubmit this request as a request for a private letter ruling.

Issue

Are the sales of dietary supplements subject to sales tax?

Discussion

In general, Colorado levies a sales tax on the sale of tangible personal property. §39-26-104, C.R.S. The sale of food is exempt from this tax, except under certain

circumstances not relevant here. §39-26-102(4.5) and 707, C.R.S. In order to qualify as exempt food, the product must fall within the definition of food in the federal Food Stamp program, 7 U.S.C. §2012(g) or supplemental foods as defined in 42 U.S.C. §1786(b)(11) if purchased with funds provided by the federal Supplemental Food and Nutrition Program for Women, Infants, and Children ("WIC Program"). The United States Department of Agriculture, Food and Nutrition Service, which administers the federal food stamp program, maintains a list of certain products that it has determined are either eligible or ineligible foods.

Food or dietary supplements or deficiency correctors are not exempt. See, Department regulation (39)26-102.4.5. These include such items as vitamins and minerals marketed in various forms, such as tablets, capsules, powders and liquids; products such as cod liver oil which is used primarily as a source of vitamins A and D; and other such items which are primarily used for medicinal purposes or as health aids. Similarly, therapeutic products and medicines (unless prescribed by a practitioner of the healing arts) are not exempt. These include patent medicines and other products used primarily as health aids and therapeutic agents, including aspirin, cough drops or syrups, cold remedies, and antacids. Spices sold for food flavoring and teas containing rose hip qualify as exempt food products. We note that the Company describes XXXXXXXX as a dietary supplement.

Miscellaneous

Please note that the department administers state and state-collected city and county sales taxes and special district sales and use taxes, but does not administer sales and use taxes for self-collected home rule cities and counties. The department maintains a list of state-administered local jurisdictions as well as self-collect home-rule cities and counties. See department publication DR 1002.

The department has numerous resources to assist retailers with sales and use tax questions. These resources are easily accessed on the department's web site at: www.taxcolorado.org. Click on "Publications / Resources" and select FYI's, Regulations, or Tax Information Index. DR 1002 is found under "Forms." You can also easily access an on-line "Sales Tax Information System" under "On-line Services" to find sales and use taxes for all cities, counties, and special districts in Colorado.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted version of the ruling.

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue
Tele: (303)866-5627
Email: ntillquist@spike.dor.state.co.us