

GIL-2008-18

September 23, 2008

XXXXXXXXXXXXX
Attn: XXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

Re: Inquiry re: sales and use taxes

Dear XXXXXXX,

The department reviewed your letter dated April 1, 2008. I apologize for the delay in responding to your request. The department recently acquired the staff needed to respond to these types of requests. The department also recently enacted a regulation governing requests for tax advice. See, §24-35-103.5, C.R.S. and Department regulation (24)-35-103.5. Pursuant to this regulation, the department issues both private letter rulings and general information letters. Private letter rulings are issued in response to specific factual settings, are binding on the department, and require payment of a fee. General information letters are issued in response to general tax questions and are not binding on the department. You can view this regulation on-line at:

<http://www.revenue.state.co.us/taxstatutesregs/3921reg24-35-103.5.html>

You have submitted a lengthy request concerning the applicability of taxes to various products. I will initially treat this as a request for a general information letter. If you require additional information or request a determination with respect to your company specific products, such a request is appropriately handled as a private letter ruling.

Issue

1. Are the sale of food supplements, soaps, deodorants, and other products 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 unless it is served hot and is not for domestic home consumption. §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). The United States Department of Agriculture, Food and Nutrition Service, which administers the federal food stamp program, maintains a list of certain products which it has determined are either eligible or ineligible foods.

Food 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.

Mouth washes, deodorants, moisturizers and other similar products are not exempt.

This response is not a determination that your company's specific products qualify for an exemption. If you request a determination with respect to your company specific products, you must submit the request as a private letter ruling.

Please note that the Department of Revenue 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. 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.revenue.state.co.us. Click on "Taxation" > "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.

Pursuant to state law, the Department will make public a redacted version of this letter. Your letter requesting this informational letter is not made public. See, §24-35-103.5(13), C.R.S. The regulation governing private letter rulings and informational letters is available on our web site at:

<http://www.revenue.state.co.us/taxstatutesregs/3921reg24-35-103.5.html>

I enclose a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments, or concerns about the redacted letter.

Sincerely,

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