



COLORADO

Department of Revenue

Taxation Division

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GIL-2007-2

XXXXXXXXXXXXX
Attn: XXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

December 4, 2007

Re: energy drinks

Dear XXXXXXXXXXX:

This letter is in response to your letter to the Colorado Department of Revenue, dated August 23, 2007, re: taxability of energy drinks, carbonated and non-carbonated. We apologize for the time it has taken to respond to your inquiry.

Colorado Department of Revenue provides informational letter as a service to taxpayers. These letters represent the opinion of knowledgeable and experienced department staff and can be a valuable resource in making informed decisions regarding your tax obligations. However, these letters are not binding on the department. §24-35-103.5, C.R.S.

Issue

Are energy drinks non-taxable foods?

Background

You list by name a variety of drinks and ask if they qualify as exempt food.

Discussion

Food is exempt from state and special district sales and use tax if it is for domestic home consumption. §39-26-707, C.R.S. Food for domestic home consumption is defined as food that is eligible for purchase under the federal food stamp program and Special Supplemental Nutrition Program for Women, Infants and Children (WIC). See §39-26-707(1)(a) and (b), C.R.S.; 7 U.S.C. §2012(g) and §1786. Therefore, we look to see if the food in question can be purchased with food stamps or WIC funds.

You state that some of the products are not eligible under the food stamp program. Therefore, those products are taxable in Colorado. As for the remaining drinks listed in your letter, it is not possible to determine from your list whether the products qualify under the federal food stamp program or WIC program. As a general observation, it appears that the products are similar to Red Bull Energy Drink (which is also on your list). We checked with the Colorado field office for the Food and Nutrition Service of the United States Department of Agriculture, which informed us that the USDA has determined that Red Bull Energy Drink is not an allowable food under the food stamp program. Therefore, and unless the other drinks you listed are significantly different from Red Bull Energy Drink, they are also taxable.

You also ask if enhanced water is exempt. See, DOR regulation (39-)26-102.4.5(1)(a)(3). However, carbonated water is not exempt (e.g., tonic water), unless it is carbonated water with sugar or sugar substitutes. See, DOR regulation (39-)26-102.4.5(1)(c)(1).

You state in your letter that, "The Home Rule is followed in the state of Colorado..." It is not clear what you are asserting. Colorado does have home rule cities and counties, which administer their own sales and use taxes. I should also note that food for home consumption is also exempt from state-administered city and county sales taxes, unless the city or county elects to tax food. §29-2-105(1)(d), C.R.S. The Department maintains a list of state administered cities and counties and whether they tax food. See, DRP 1002 which is available on our web site at <http://www.revenue.state.co.us/PDF/drp1002.pdf>.

Finally, the Department makes a good faith effort to provide accurate and complete answers to questions posed to it by taxpayers. However, the information and answers provided here are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved this response.

Respectfully,

Colorado Department of Revenue
Office of Tax Policy