



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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GIL 24-003

June 24, 2024

XXXXXXXXXX
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Via Electronic Mail: XXXXXXXXXXXX

Re: Taxability of Certain Beverages and Insulin

Dear XXXXXXXXXXXX:

You submitted a request for a general information letter regarding the taxability of certain beverages and insulin. The Colorado Department of Revenue (“Department”) issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues but is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department, and requires payment of a fee. For more information about general information letters and private letter rulings, please see 1 CCR 201-1, Rule 24-35-103.5.

Issues

Does Colorado impose sales and use tax on sales of the following products?

1. Non-Alcoholic Beer and Kombucha
2. Bottled Coffee with Sweetener
3. Insulin Sold Without Prescription

Discussion

Colorado generally imposes sales and use tax on non-alcoholic beer, kombucha, bottled coffee with sweetener, and insulin that is not dispensed pursuant to the direction of a practitioner.

Colorado generally imposes sales and use tax on tangible personal property purchased at retail.¹ “Tangible personal property” means corporeal personal property, and generally “embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances that are dealt in and capable of being possessed and exchanged.”² Because food, which includes beverages, and drugs, like insulin, are tangible

¹ Sections 39-26-104(1)(a) and 39-26-202(1), C.R.S.

² Section 39-26-102(15)(a)(I), C.R.S.

personal property, they are subject to state sales and use tax unless a specific exemption applies.

First, you asked about non-alcoholic beer and kombucha, and you indicated that both of these products “by definition contain trace amounts of alcohol” that is less than 0.5% alcohol by volume (ABV). Colorado exempts from sales and use tax “food,”³ which means food for domestic home consumption as defined in 7 U.S.C. sec. 2012(k), as amended, for purposes of the federal food stamp program.⁴ The federal food stamp program referenced in Colorado statute is now the U.S. Department of Agriculture’s (USDA) Supplemental Nutrition Assistance Program (SNAP).

“Food” generally includes food and drink,⁵ but the federal definition excludes alcoholic beverages.⁶ A USDA policy memo clarifies that, with the exception of “cooking ingredients,” “[a]lcoholic beverages are not eligible to be purchased with SNAP benefits.”⁷ The USDA website further explains, “All other products that contain any amount of alcohol are ineligible for purchase with SNAP benefits. This includes low-alcohol beer (sometimes called ‘near beer’ or ‘non-alcoholic beer’) ... and any other product containing alcohol.”⁸ Because beverages that contain any amount of alcohol are excluded from the federal definition of “food,” non-alcoholic beer and kombucha are excluded from the Colorado exemption and are subject to Colorado sales and use tax.

Second, you asked about bottled coffee-based beverages that contain natural or artificial sweeteners. Exempt food for domestic home consumption generally includes food and drink,⁹ but soft drinks are specifically subject to Colorado sales and use tax.¹⁰ “Soft drinks” means nonalcoholic 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 fifty percent of vegetable or fruit juice by volume.”¹¹ Coffee-based beverages that meet the definition of soft drinks because they contain sweetener but not milk products or substitutes are subject to Colorado sales and use tax.

Finally, you asked about insulin sold without a prescription. Insulin in all its forms dispensed pursuant to the direction of a practitioner is exempt from Colorado sales and use tax.¹² “Practitioner” means a person authorized by law to prescribe any drug or device, acting within the scope of the authority.¹³ While the statute sets forth that prescription drugs are exempt if dispensed in accordance with a prescription by a practitioner,¹⁴ it does not use such explicit language with the insulin exemption.¹⁵ As a result, insulin does not necessarily require a prescription to qualify for the exemption because it only needs to be dispensed pursuant to the

³ Section 39-26-707(1)(e) and (2)(d), C.R.S.

⁴ Section 39-26-102(4.5)(a), C.R.S.

⁵ 1 CCR 201-4, Rule 39-26-102(4.5).

⁶ 7 U.S.C. § 2012(k).

⁷ FOOD & NUTRITION SERV., U.S. DEPT. OF AGRIC., RPMD POLICY MEMORANDUM NO. 2020-03, FOOD DETERMINATIONS - ELIGIBLE FOODS (EXCLUDING MEAL SERVICES) (2020).

⁸ U.S. DEPT. OF AGRICULTURE, ASKUSDA, [HTTPS://ASK.USDA.GOV/S/ARTICLE/ARE-COOKING-WINES-AND-FLAVOR-EXTRACTS-ELIGIBLE-FOR-PURCHASE-WITH-SUPPLEMENTAL-NUTRITION-ASSISTANCE](https://ask.usda.gov/s/article/are-cooking-wines-and-flavor-extracts-eligible-for-purchase-with-supplemental-nutrition-assistance) (last visited June 20, 2024).

⁹ 1 CCR 201-4, Rule 39-26-102(4.5).

¹⁰ Sections 39-26-707(1.5)(a) and (2)(d)(I), C.R.S.

¹¹ Sections 39-26-707(1.5)(b)(II) and (2)(d)(II)(B), C.R.S.

¹² Sections 39-26-717(2)(b) and (3), C.R.S.

¹³ Sections 39-26-717(1)(c) and 12-280-103(40), C.R.S.

¹⁴ Section 39-26-717(2)(a), C.R.S.

¹⁵ Sections 39-26-717(2)(b), C.R.S.

direction of a practitioner.¹⁶ The direction of a practitioner may include a prescription.¹⁷ Either the seller must obtain and retain sufficient information and documentation from the purchaser to verify that the insulin is exempt because it is being dispensed pursuant to the direction of a practitioner, or the insulin is subject to Colorado sales and use tax and the seller must collect the sales tax at the time of the sale.¹⁸

Miscellaneous

This letter represents the good-faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by self-collected home-rule cities. You may wish to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at Tax.Colorado.gov for more information about state and local sales taxes.

Thank you for your request.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

¹⁶ Section 39-26-717(2)(b), C.R.S.

¹⁷ Sections 39-26-717(1)(c) and 12-280-103(40), C.R.S.

¹⁸ Paragraphs (1) and (2)(c) of 1 CCR 201-4, Rule 39-26-105-3. Also note that the seller must exercise due diligence with respect to any sale for which the purchaser claims exemption from sales tax, and the seller has the burden of demonstrating to the Department that the purchaser was eligible for the exemption.