

Date Issued: November 12, 2014
Georgia Letter Ruling: LR SUT-2014-18
Topic: Food

This letter is in response to your request for guidance on the application of Georgia sales and use tax to sales of meal replacement items and vitamin supplements.

Facts

Taxpayer sells meal replacement products and vitamin supplements as part of a fat loss program that includes prepackaged foods for breakfast, lunch, and one snack during the day. Meal replacement products have adequate protein to replace meals and come in numerous forms. The products are sold ready to eat, or prepared via the microwave, adding water and shaking, or boiling.

The vitamin supplements include calcium/magnesium, potassium, multivitamin, omega 3 anti-oxidants, and digestive enzymes. Taxpayer does not mix or heat food or supplements at any time prior to retail sale. All products are sold for off premises human consumption.

Issues

1. Are meal replacements described above subject to Georgia sales and use tax?
2. Are vitamin supplements described above subject to Georgia sales and use tax?

Analysis

O.C.G.A. § 48-8-3(57) exempts “food and food ingredients” from state (but not local) sales and use tax when such items are sold to individual consumers for off-premises human consumption.¹ “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.² “Food and food ingredients” does not include alcoholic beverages, dietary supplements, or tobacco. For purposes of the exemption in Code Section 48-8-3(57), “food and food ingredients” also does not include prepared food.

“Prepared food” generally means food:

1. Sold in a heated state or heated by the seller;
2. With two or more food ingredients mixed or combined by the seller for sale as a single item;
or
3. Sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.³

If Taxpayer purchases the items at issue and resells the items, such items do not satisfy the definition of “prepared food” quoted above. In such a case, Taxpayer would simply be a reseller of prepackaged items. The prepackaged items would not be sold in a heated state or heated at any time by the seller; the items are not comprised of two or more ingredients mixed or combined by the seller; and the items would not be sold with eating utensils.

As mentioned above, “food and food ingredients” also does not include dietary supplements. “Dietary supplement” means any product, other than tobacco, intended to supplement the diet that:

¹ O.C.G.A. § 48-8-3(57).

² O.C.G.A. § 48-8-2(16).

³ O.C.G.A. § 48-8-2(27) (A).

1. Contains one or more of the following dietary ingredients: a vitamin, mineral, herb or other botanical, amino acid, a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and
2. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
3. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label as required pursuant to 21 C.F.R. § 101.36.⁴

“Conventional foods are foods that are not dietary supplements . . . Dietary supplements must be labeled as such and must not be represented for use as a conventional food or as the sole item of a meal or the diet. One way to distinguish dietary supplements from conventional foods is by looking at the nutrition information on the label of the product. Conventional foods must have a "Nutrition Facts" panel on their labels, but dietary supplements must have a "Supplement Facts" panel.”

In the present case, products properly labeled with a “Nutrition Facts” box as required by the Code of Federal Regulations are “food and food ingredients”, and are subject to state sales tax but not local sales tax when sold to individual consumers for off-premises human consumption. However, products that are properly labeled with a “Supplement Facts” box as required by the Code of Federal Regulations do not fall within the scope of “food and food ingredients” and are subject to both state sales tax and local sales tax.

Rulings

Taxpayer’s sales of products that are properly labeled with a “Nutrition Facts” box are exempt from state sales tax, but not local sales tax, when sold to individual consumers for off-premises human consumption, when the products fall within the scope of the “food and food ingredients” state sales tax exemption. Taxpayer’s sales of products that are properly labeled with a “Supplement Facts” box do not fall within the scope of the “food and food ingredients” state sales tax exemption and are, thus, subject to both state and local sales tax.

1. Products properly labeled with a “Nutrition Facts” box are exempt from state sales tax, but not local sales tax, when sold to individual consumers for off-premises human consumption.
2. Products properly labeled with a “Supplement Facts” box are fully subject to both state sales tax and local sales tax.

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, circumstances, and taxpayer in question. Should the circumstances regarding the transactions change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that subsequent statutory or administrative rule changes or judicial interpretations of the Statutes or Rules upon which this advice is based may subject similar future transactions to a different tax treatment than that expressed in this response.

⁴ O.C.G.A. § 48-8-2(11.1).

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