

86 Ill. Adm. Code 130.2055 provides that governmental units, incur Retailers Occupation Tax liability when selling tangible personal property to the public for use or consumption. The only exception is the sale of an item by a governmental unit in the performance of its governmental function. (This is a GIL.)

May 25, 2007

Dear Xxxxx:

This letter is in response to your letter dated February 28, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC School District requires students to wear physical education uniforms for their physical education course, and purchase locks for their use in the locker rooms. District sells the uniforms and locks directly to the student.

ABC School District is seeking clarification regarding the payment of Illinois Sales Tax to the Illinois Department of Revenue remitted by a high school district for the sale of these physical education uniforms and locks to high school students.

Thank you in advance for a written response to this inquiry. If you have any questions or need further clarification, please contact me.

DEPARTMENT'S RESPONSE

When governmental units make sales that are not in the direct performance of their governmental function, the sales are generally taxable. See 86 Ill. Adm. Code 130.2055. Examples of taxable sales by governmental units include the operation of concession stands by park districts, sales of smoke detectors by fire protection districts, sales of leaf bags by municipalities, sales of books and supplies by school districts and sales of T-shirts, caps and mugs by State agencies. When making these types of sales, governmental units must not give their suppliers their exemption

identification “E” numbers. They must, rather, register as retailers with the Department and remit Retailers' Occupation Tax on their sales. They may make tax-free purchases of the tangible personal property to be sold by providing Certificates of Resale to their suppliers. See, 86 Ill. Adm. Code 130.1405. The object is to ensure that governmental units do not have a competitive advantage when selling items that are also sold by Illinois retailers. The Illinois General Assembly did not intend to give government a competitive selling advantage over Illinois citizens.

The Department once promulgated a regulation that would have permitted school districts and private schools to sell books and educational supplies to students tax-free. However, retailers of books and school supplies who were adversely affected by that regulation filed a lawsuit and the regulation was voided by the Illinois Supreme Court. See, *Follett's Illinois Book and Supply Store, Inc. v. Isaacs, Director of Revenue*, 27 Ill. 2d 600, 19 NE 2d 324 (1963).

For these reasons, we conclude that a high school district incurs a Retailers' Occupation Tax liability when it makes retail sales of uniforms and locks to students because such sales are not made in the direct performance of a governmental function and are in competition with other retailers.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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