

ST 07-0134-GIL 10/22/2007 EXEMPT ORGANIZATIONS

This letter concerns the length of an annual Christmas tree sale by an exempt organization. See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

October 22, 2007

Dear Xxxxx:

This letter is in response to your letter dated October 12, 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:

Please accept this letter as a formal request for a letter ruling regarding the above noted exempt organization.

ABC, a 501C3, have applied for and been granted an 'E' number for Illinois purposes. Their main goal is promote unity, camaraderie and communication between parent and child. It is run solely by volunteers and invites participation of both boys and girls and their parents.

The ABC hold an annual Christmas tree sale to raise funds that are then donated to local charities. The sale is run by the scouts and their parents. It begins the Friday after Thanksgiving and runs until December 23rd. All proceeds are donated to local charities, and most customers pay more than the stated price of the trees because of this.

Ill. Adm. Code 130.2005 addresses sales by Non-Profit organizations and outlines the exemptions available. Our understanding of the regulation is that the sales must be made by organizations that are exclusively charitable, and that the sales must be non-competitive. The regulation stresses that the sales must be infrequent and that the dominant motive of the purchase must be the making of a donation. However, the regulation does not give a time frame allowed for the sale to occur.

86 Ill. Adm. Code 130.2005(a)(3)(D) Under this second exception, examples of exempt sales are infrequent sales of cookies, doughnuts, candy, calendars or Christmas trees by Scout organizations or by other exclusively charitable organizations or by exclusively religious organizations. In this category, the Attorney General's opinion stresses that the sale must be infrequent, and that the dominant motive of the purchase must be the making of a donation to the charitable or religious organization which conducts the sale, rather than the acquisition of property.

Because the sales by ABC occur annually, all proceeds are donated to charity, and most customers pay more than the stated selling price due to the charitable nature of the sale, I believe ABC qualifies for exemption under the regulation.

If you feel ABC does not meet the regulation tests, it is respectfully requested that ABC be allowed to present further evidence of its case.

DEPARTMENT'S RESPONSE:

As you have noted in your reference to 86 Ill. Adm. Code Section 130.2005, subpart (a)(3)(D) recognizes that sales of Christmas trees by scout organizations or other similar exempt organizations that have an E-number from the Department are generally considered noncompetitive sales if they meet the tests set out subpart (a)(3). As noted in subpart (a)(3)(B)(iii), the transaction must not be a continuing one but rather should be held either annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative decision, to be made by the Department of Revenue.

Your specific inquiry is whether the Department considers a sales period from the Friday after Thanksgiving to December 23rd as an excessive period of time for such a sale to qualify as an annual Christmas tree sale by a scout organization as described in subpart (a)(3)(D) of Section 130.2005 of the Department's administrative rules. We do not believe that the sales period you have described for a Christmas tree sale would disqualify such a sale as an annual sales event for purposes of subpart (a)(3)(D) of Section 130.2005. Please note that all of the provisions of subpart(a)(3) must also be met in order for such a sale to qualify for the exemption described in subpart (a)(3) of Section 130.2005.

I hope this information is helpful. 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,

Terry D. Charlton
Senior Counsel, Sales & Excise Taxes

TDC:msk