

Proceeds from mandatory service charges that are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed are not subject to tax. See 86 Ill. Adm. Code 130.2145(d). (This is a GIL.)

December 31, 2007

Dear Xxxxx:

This letter is in response to your letter received in this office on November 8, 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.tax.illinois.gov 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:

I am writing to ask for a Legal Ruling on the Hotel in Springfield's [sic] **designating their Service Charge as taxable**. They even go so far as to refer to their Service Charge as a '21% taxable service charge.'

I would be most grateful if you could review the enclosed contract, including the following apparently improper and illegal language (my underlining):

Page 3, under TAXES: 'Currently, food, beverage and service charges are subject to the following taxes: 1) City and State Tax 7.75%'

Page 3, under SERVICE CHARGES: 'a 21% taxable service charge will apply to all set food and beverage functions, room rental and audio-visual, and will be posted on the Master Account.'

...and send written documentation of your Legal Ruling on this question of justified taxability, and the applicability of the City and State Sales Tax to a Service Charge.

Thank you.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. Sales of food by hotels, whether in restaurants, coffee shops, or catered functions, are subject to Retailers' Occupation Tax. In addition, the purchaser of the food incurs a corresponding Use Tax liability. Sales of items through vending machines or gift shops of hotels are also subject to Retailers' Occupation Tax and Use Tax. When individual members of exclusively charitable, religious or educational organizations, or individual employees of governments or their agencies, purchase meals or other tangible personal property from hotels, the hotels incur Retailers' Occupation Tax liabilities. However, if governments, churches, schools, or charities possess valid tax exemption identification numbers issued by the Department and the organization itself directly purchases meals in the performance of some organizational function, such purchases could be made tax free upon presentation of the Department-issued exemption numbers

Generally, proceeds from mandatory service charges that are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed are not subject to tax. 35 ILCS 120/2-5(15); 86 Ill. Adm. Code 130.2145(d). However, the portion retained by the hotel is subject to tax.

There is no evidence in the contract that the mandatory service charges are turned over to the employees as tips or in lieu of tips. Therefore, the mandatory service charges for catering of food and beverages would be taxable as part of the gross receipts from the sale of food and beverages.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov 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,

Richard S. Wolters
Associate Counsel

RSW:mzk