

This letter discusses the sales tax liabilities of university dining facilities that are open to the public, where sales are made by the university and by other vendors, and some purchases are made using university "dining dollars." See 86 Ill. Adm. Code 130.2005. (This is a PLR.)

August 10, 2007

Dear Xxxxx:

This letter is in response to your letter dated August 21, 2006, 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 1200.1120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to UNIVERSITY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither UNIVERSITY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

Please accept this letter as a request for a Private Letter Ruling pursuant to Illinois Administrative Code Section 1200.110. UNIVERSITY requests the ruling to determine whether the Illinois Retailers [sic] Occupation Tax should be collected and paid on food sold in a student union setting to residential students living in on-campus housing.

#### FACTS

UNIVERSITY is a public institution of higher education located in CITY, Illinois. The University offers both undergraduate and graduate degrees. The University was founded in DATE and currently has approximately 12,000 students, of which over 45% reside in University housing.

The University currently has 4 dining halls for students living on-campus in University owned and operated housing, each with a different theme and menu. Students can eat

at any of the dining halls that they want. All students that are housed on-campus may purchase one of four meal plans. The plans vary in what is provided to the student, but in general, they include a fixed number of meals per week and 'Dining Dollars.'

'Dining Dollars' are purchased and/or included on every meal plan. Dining Dollars are placed on the students magnetically encoded photographic ID card (CARD) and can be used like cash in the University Food Court, LOCATIONS or to purchase additional meals in any of the 4 dining halls. Dining Dollars can be purchased by students that do not reside in University housing and employees.

When the CARD is 'swiped' at designated locations on-campus the student or employee is allowed to eat one of the fixed meals (dining halls only) or purchase food with Dining Dollars from the dining halls or other operations on-campus. Students and employees can add money to their 'Dining Dollars' account at anytime. A campus-wide computer system keeps track of the unused balance, both meals and Dining Dollars. The computer system can provide an auditable and verifiable record of food sales to each student or employee.

The meal plans can only be used at designated sites on campus. The Dining Dollars can not be used at any off-campus establishments.

## LAW

It has been a long standing policy of the Department of Revenue to exempt from taxation under the Retailer [sic] Occupation Tax meals served to students and staff in a school's on-campus dining facilities (86 Ill. Admin. Code 130.2005(b)(4)) when the facilities are not open to the public.

In addition, the Department has provided guidance through a Private Letter Ruling (ST 01-0004-PLR) and General Information Letters (ST95-0195-GIL and ST 02-0038-GIL) that in a situation where a University dining facility is open to the public but has a mechanism for identifying and documenting exempt sales to students then the sale of food to those students will not be subject to the Retailers [sic] Occupation Tax.

In 2001, the Appellate Court for the Fourth District of Illinois ruled, in a case (No. 4-00-0729) with the same franchisee that operates the University's BUSINESS1 store, that the franchisee was liable for retailers' occupation tax [sic] in a situation with many similarities to this one.

## DISCUSSION

Although similar in many ways to the Appellate Court case mentioned above, our situation has one important difference. In 1998, the students were dissatisfied with the University's Dining Hall operations and approved a fee increase to allow changes to be made. Because many of the ideas developed were too costly or not workable with the way the facilities were configured, the University hired a consultant to review the operations and make recommendations. The findings of the report were that the University had too many dining halls and suggested the closure of two, and the creation of an expanded facility in the University Union along with changes and modernization to the dining format.

The University and State of Illinois has a significant investment in residential facilities on its campus in CITY, Illinois. In order to maintain occupancy at the highest possible level, the University regularly monitors student opinions and activities to provide the students what they want. The students said they wanted more choice in food. Therefore, the University developed dining halls with different themes and menus. In addition, the students were allowed to choose which dining hall they would eat in.

In the University Union, a food court was created to meet the demands of the students. The Food Court brings together a number of different eateries with a common seating area. Included in the Food Court is BUSINESSSES and a soup station. All of the operations are owned and operated by the University, except BUSINESS1 which is leased to a franchisee. Also located in the Union is BUSINESS2, a coffee shop that has become very popular with the students. The on-campus students consider the Food Court as one of their options under the meal plan.

Another innovation is the BUSINESS3 located in two of the dining halls. Both locations offer beverages, snack foods, single-serving entrees and basic needs with extended hours to fit the students' lifestyles.

Dining Dollars can be used for purchases at the Food Court, BUSINESSSES as well as the 4 dining halls. Currently, sales tax is collected on all sales in the Food Court, BUSINESSSES.

When establishing the Food Court, the University requested proposals from a large number of fast food type vendors. Only BUSINESS1 agreed to lease a facility. Others elected to sell the University a franchise. But the vast majority of vendors that were solicited did not want to participate because the historical sales volume did not justify the investment.

The University does not advertise or promote the on-campus dining options to anyone not associated with the campus. Some visitors to campus may elect to eat at one of the locations mentioned above however sales to these visitors are subject to sales tax. Approximately 21% of the sales at the Food Court are cash sales. All other sales are related to Dining Dollars, either students with meal plans or students/employees with purchased meals. We are unable to analyze whether the cash comes from someone University related or the general public, however, we are not attempting to compete with the public vendors, in fact, BUSINESS1 has another location within several blocks of the campus.

Another factor that enters into the use of the Food Court by the general public is a lack of parking. Due to construction and limited parking facilities; it is difficult for the general public to access the Food Court. This situation has been and will continue to be a problem for the University in the foreseeable future.

During the year ended June 30, 2006, the University had approximately 3800 on-campus residential students purchase meal plans and approximately 200 other students and employees purchase Dining Dollars. Sales of meal plans and/or Dining Dollars represent sales to less than 30% of the population of students and employees (total 13,800) to whom sales would be tax-exempt. This would leave over 70% of the students and employees as potential cash customers of the Food Court. Accordingly, de minimis public use is assumed.

During the first part of 2006, the BUSINESS1 franchisee at the University underwent a sales tax examination for the period from January 1, 2003 through December 31, 2005. The examiners have assessed the franchisee with tax for the Dining Dollars spent at their location by students who live on campus. This would appear to be in conflict with the rulings that the Department has provided that a system of sales that was both auditable and verifiable for students who live on-campus in University housing with a meal plan would be exempt from Retailers Occupation Tax.

Because of the tax examination, UNIVERSITY has started to collect tax on Dining Dollar sales in non-dining hall facilities to students who live on-campus in university housing. Prior to the examination, the University had not been charging sales tax on these sales based upon General Information Letter ST95-0195-GIL and discussions with other State universities.

### REQUEST FOR RULING

We have included above a complete statement of facts and other pertinent information related to our ruling request. Attached are applicable contracts, agreements and other documentation.

Except for the changes noted above due to the tax examination of the BUSINESS1 franchisee, UNIVERSITY has followed the same procedures for the collection and remittance of sales tax since the Food Court was established in 2000. We are requesting a ruling on those procedures.

Although the Department has issued rulings on similar fact patterns, we do not believe that the Department has ruled on the situation that we are presenting in this ruling request. The University believes that Private Letter Ruling (ST 01-0004-PLR) and General Information Letters (ST95-0195-GIL and ST02-0038-GIL) provide us with the necessary authority to claim sales to on-campus students from meal plans are exempt from sales tax.

There is no trade secret information contained in this request.

We accordingly submit our request for a Private Letter Ruling to the Illinois Department of Revenue to exempt the purchase of meals by on-campus students through meal plans from sales tax.

### **DEPARTMENT'S RESPONSE**

You have asked whether the Retailers' Occupation Tax should be collected and paid on food sold in a student union setting to students who live on campus and have purchased a meal plan. You have described the "Dining Dollars" program used on campus and have included copies of the Campus Dining Study, the contracts that the University has entered into with GROUPS. You also enclosed information about the various other student dining and shopping venues including GROUP, the University Food Court, BUSINESSES.

A review of the Department's position regarding sales of food in campus cafeterias and dining facilities may be helpful.

As stated in the Department's regulation at 130.2005(b)(4)(A):

*A school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. In any instance in which the dining facility is opened up for the use of other persons, all sales that are made at such facility while that condition continues to prevail are taxable.*

In a college campus setting, this has meant that sales of meals by the university to students and employees in a closed dormitory cafeteria were exempt, but all food sales in a student union type setting open to the public, including sales to students and employees, were taxable. The restricted cafeteria exemption has been available to schools for many years and is supported by 86 Ill. Adm. Code 130.2005(b)(4)(A). The school would incur Retailers' Occupation Tax liability if it should engage in selling any of the same items to the public.

The regulatory provisions and the closed cafeteria concept have served two purposes. The first purpose served by the closed cafeteria concept is to solve the practical impossibility that the Department would face when auditing an open facility in verifying that all of the sales claimed to be exempt were, in fact, made to students and employees of the school. The second purpose served by the closed cafeteria concept is the protection of retailers in competition with the school's open facility. That is, student union type (open to the public) selling competes with area food service establishments for student purchases as well as for purchases by the public.

As an accommodation to schools that sell meal plans but have no separate dormitory food facility, the Department has allowed universities to make tax-free sales of meals to students in a central food facility open to the public. Such sales by a university may be made tax free in a campus cafeteria that is open to the public only if there is a mechanism for identifying and documenting, at or before the time of sale, the nontaxable sales of food to students living in university housing and enrolled in a meal plan. The mechanism for identifying and documenting such sales to such students, however, must consist of something more than simply showing an identification card. These mechanisms must consist of systems that provide both an auditable and verifiable record of food sales to each of those students.

Please note that in order to avoid problems of competition, the Department has limited tax-free sales of food by the school in facilities open to the public to students who live in university housing and have purchased a meal plan. These sales can only be made tax-free if the school has a program in place that allows appropriate students to be identified in an auditable and verifiable record system. No sales paid for in "dining dollars" may be made tax exempt unless the dining dollars can identify students living in university housing that have purchased a meal plan. No cash sales may be made tax exempt. Meals sold to employees of the school and others are subject to tax in facilities open to the public.

Over time, the Department has become aware that on campus food services have expanded to include various additional kinds of vending arrangements. As your facts indicate, food services in the student union include not only traditional sales of food by the school, but sales by the school operating as a franchisee and sales made by commercial vendors. The Department recognizes that the selling of meals by a university in a food facility open to the public may not be done tax-free except to students who live in university housing and have bought a meal plan. For this, there must be an auditable and verifiable record system in place for tracking these sales.

In 2001, the Illinois Fourth District Appellate Court decided in the case of *Subway Restaurants v. Topinka*, 322 Ill.App.3d 376, 751 N.E.2d 203 (2001), that a BUSINESS1 restaurant selling food on campus was not an agent of the university for purposes of tax exemption. The restaurant also was

not a wholesale provider of products to the university for purposes of tax, and the university was not a purchaser of the restaurant's products for purposes of an exemption from tax. Therefore, even though the restaurant operated in a space that it leased from the university, none of the sales made by the restaurant qualified as exempt from sales tax.

It is the Department's position, as articulated in the regulation (86 Ill. Adm Code 130.2005(b)(4)(A)), that it must be the school itself that makes such sales. This policy was affirmed by the *Subway* case discussed above.

The contract between the University and BUSINESS, enclosed with your request, is a lease agreement between the University and BUSINESS1 leasing on-campus premises to BUSINESS1 in order for BUSINESS1 to make sales of food to students and employees in a dining facility open to the public. All such sales made by BUSINESS1 on campus are subject to sales tax.

The contract between the University and BUSINESS is an agreement for XYZ, as licensor, to grant the University, as licensee, the right to use the XYZ system to sell certain of the XYZ products from kiosks, mobile carts, custom facades, counter areas and/or other retail facilities. The grant is made by XYZ subject to the University's full compliance with the terms and conditions of the agreement including complete conformity with the XYZ culture as defined in the agreement. The University and XYZ agree that the University's relationship with XYZ is that of a licensor and licensee. It is the Department's position that all such sales made by the University as a licensee of XYZ are competitive sales and as such are subject to sales tax with the exception of students who live in university housing and have bought a meal plan. For this, there must be an auditable and verifiable record system in place for tracking these sales. This means, for example, that the system must be able to distinguish tax-free sales of meals to students who live in university housing and have a meal plan from taxable sales of meals to students who do not live in university housing and do not have a meal plan but are paying with dining dollars.

The contract between the University and BUSINESS is a sublicense agreement by BUSINESS, as sublicensor, and the University, as sublicensee, to grant the University a nontransferable right and license to use the BUSINESS trademarks in connection with the preparation of and sale of its products. As part of the agreement between the parties, the University may not use the trademarks in its corporate or business name, or convey to its customers or the public that it has any association with the sublicensor or licensor other than as a buyer of the products. All sales made by the University as a vendor of BUSINESS may be made free of tax to students who live in university housing and who have bought a meal plan and there is an auditable and verifiable means of tracking the sales. All other sales are subject to tax.

All sales of non-food items on campus, including sales made by the school, are subject to tax regardless of who purchases them. This is on going competitive selling.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

If you have further questions concerning this Private Letter ruling, you may contact me. If you have further questions related to the Illinois sales tax laws, please visit our website or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton  
Chairman, PLR Committee

TC/MPM:msk