

This letter discusses donor/donee situations and Service Occupation Tax. See 86 Ill. Adm. Code 150.305.

January 17, 2008

Dear Xxxxx:

This letter is in response to your letter dated August 24, 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:

My first question is whether clothing catalogs (such as ABC) mailed via the US Post Office to our customers free of charge, are subject to use tax.

My second question is whether catalogs sent to our retail stores, located in Illinois and displayed for our customers to take free of charge, are subject to use tax.

Please contact me with any questions or comments.

Thank you for your time.

DEPARTMENT'S RESPONSE

Service Occupation Tax

When a printing company contracts to print custom printed marketing literature, a special order printing situation exists and the transaction is subject to tax under the Service Occupation Tax Act. Who is liable for the tax in these situations depends upon the method chosen by the printer in calculating his Service Occupation Tax liability. See 86 Ill. Adm. Code 130.2000 and 140.101. We do not have sufficient information regarding your printer to determine his liability and, consequently, yours, but we hope the following information is helpful.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property

transferred incident to sales of service. For your general information see 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen may use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. De minimis servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. These servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. See 86 Ill. Adm. Code 140.109.

Donor/Donee

Under the Illinois Use Tax Act, donors who purchase tangible personal property (such as advertising brochures or catalogs) and give it away in Illinois make a taxable use of the donated property. "Use" is defined as the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. See subsection (a) of 86 Ill. Adm. Code 150.201.

If the donor's use occurs in Illinois, the donor incurs Use Tax liability (or potentially Service Use Tax liability for custom printed materials). If the advertisements are mailed by U.S. Mail into Illinois from an out-of-State location, the donor, even though it is donating the advertising materials to Illinois recipients, has exercised no power or control over the property in Illinois. In this instance, the donor would not have made any taxable use of the property in Illinois.

This tax analysis changes if the donor were to have any control over the property in Illinois. For example, if the donor were to have power of recall over the property once it entered Illinois, it could incur a Service Use Tax liability in Illinois.

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,

Debra M. Boggess
Associate Counsel

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