

This letter discusses meals provided by restaurants to their employees. See 86 Ill. Adm. Code 130.2050. (This is a GIL.)

February 5, 2008

Dear Xxxxx:

This letter is in response to your letter dated July 20, 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 would appreciate a General Information Letter regarding the use tax calculation on volunteer dinners. Specifically whether the meals provided to our volunteers and independent contractors should be calculated at the \$.75 meal under Retail's [sic] Occupation Tax Section 130.2050 or on the actual food cost per dinner?

Background:

I am the Assistant Treasurer of a local social organization, ORGANIZATION. ORGANIZATION is an Illinois corporation organized under the Federal IRS 501c and has a State of Illinois certificate of registration for resale, IBT number #.

ORGANIZATION owns and operates the NAME, at which we offer German cuisine every Friday night to the public. The adult dinners sell for \$10 each and include a meat, vegetable, salad, bread and ice tea. We also offer \$7 chicken dinners weekly on Tuesday nights, except during the summer months. And monthly we have a \$6 fish dinner on Sundays, except during the summer. I am enclosing a sample menu.

ORGANIZATION does not have any full- or part-time employees. Our hired work is done through independent contractors. Currently we have a dishwasher, cook and accordion player working for us on a weekly basis. During our Friday dinner operations, the meals and bar are attended by club member volunteers. A shift for the kitchen crew

is generally 5-8 p.m. and the bar operates in 3-4 our [sic] shifts going until midnight. The operating hours for the other dinners is [sic] generally 5-8 p.m.

The Committee responsible for the management of the NAME, with ORGANIZATION Board consent, offers a free dinner to each of the volunteers and independent contractors as appreciation for their work. Food for the dinners is purchased under the ORGANIZATION resale certificate. We collect and pay sales tax on the dinners sold.

I have been working with the NAME Committee to get the information needed to properly assess use tax on the dinners consumed by the volunteers and independent contractors. After a year of prodding, they have begun cooperating. Based on the number of dinners served and the food purchases, I am able to calculate our dinner costs to be anywhere from \$1.32 to \$10.37 each, but generally average \$4.60. I am enclosing the 2007 dinner costs.

I have been self-assessing the 1% use tax based on the calculated actual dinner cost based on food purchased and number of dinners served, including the dinners sold and given to the volunteers and independent contractors.

A long-time influential club member has contradicted this approach, saying that the use tax should be calculated on a \$.75 meal. She is quoting Section 130.2050 Sales and Gifts by Employers to Employees under Illinois Department of Revenue regulations. 'Where hotels, restaurants or other food vendors furnish free meals, as defined fully in Subsection (b) of this Section, to their employees, it will be presumed, in the absence of evidence establishing a lower figure, that the average cost of such meals to such food vendor is 75¢ per meal, so this would be the tax base on which such food vendor should compute his Use Tax liability with respect to such meals.'

Your prompt written response is appreciated.

DEPARTMENT'S RESPONSE:

A restaurant or other place of business is not liable for Retailers' Occupation Tax liability when it provides meals to employees free of any charge, so long as such employees are entitled to no additional compensation if they fail to eat such meals at the restaurant's place of business. See 86 Ill. Adm. Code 130.2050. In these situations the restaurant employer would incur an Illinois Use Tax liability based upon the cost price of the food. The base (cost price of the food that is consumed) upon which this Use Tax is calculated, in the absence of evidence establishing a lower figure, is presumed to be 75 cents per meal. See Section 130.2050(c). Food used in such employee meals is generally subject to the low 1% State rate of tax.

For purposes of Section 130.2050(c), the volunteers may be treated as employees for calculating the Use Tax liability. The rule does not provide for similar treatment for "independent contractors." Therefore, their tax base is the cost price of the food that is consumed.

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:msk