

The Department does not issue binding rulings in the form of General Information Letters. Only Private Letter Rulings that meet the requirements of 2 Ill. Adm. Code 1200.110 are binding upon the Department and are only binding to the taxpayer who is the subject of the request for ruling. See 2 Ill. Adm. Code 1200.110. (This is a GIL.)

February 28, 2008

Dear Xxxxx:

This letter is in response to your letter dated January 24, 2008, 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:

This letter is a follow-up to our telephone conversation, in reference to your written reply of my original letter dated August 10, 2007 (both copies attached), regarding the measure of tax on 'samples' given away by our client in the State of Illinois. The Department's position was that a determination was inconclusive due to the ambiguity of the fact pattern in the original ruling request. An explanation of the manufacturer's cost and the components of the agreement needed to be described in further detail and/or supported with a contract (also attached for your reference). Therefore, it is our hope that after review of the following facts, you will have the necessary information to respond with a conclusive informal ruling.

In our original letter, we stated that Company R was the U.S. distributor of the manufacturer's beverage, with an obligation to carry out the marketing plans in the interests of the manufacturer consistent with the manufacturer's global strategy. Part of the strategy is providing samples to the general public (at sporting events, to sponsored athletes, etc.) free of charge for publicity and exposure purposes. At the time of give-away, Company R becomes the consumer of tangible personal property given away without charge. Therefore, the manufacturer/retailer relationship becomes one in the same, being that the manufacturer becomes the retailer of the samples to Company R.

It is also important to note that Company R is a wholly owned subsidiary of the manufacturer. It is the manufacturer's desire to transfer U.S. profits back to Europe by elevating the original sale price per can. The 'price' per can (described originally as the 'current inventory price') is a function of the manufacturer's revenue goal. Thus the original sale price does not reflect manufactured cost, and the transactions described in the agreement represent a reduction in the cost of Company R's inventory.

Neither Company R nor the manufacturer is reimbursed by a third party for providing samples to the general public. Because the manufacturer is also the retailer, recovery of samples from Company R is made on manufactured cost of the item, or donor's cost price as defined in 86 Ill. Adm. Code Section 150.305(b) as '...materials and products purchased and incorporated into the finished product,' which is representative of the \$0.60 described in our original memo.

We appreciate your time and consideration of the additional facts. If there are any other questions, please contact me at your convenience.

DEPARTMENT'S RESPONSE:

Your latest request asks the Department to respond with a "conclusive informal ruling." The Department does not issue "conclusive" or binding rulings on an informal basis. As noted in the introduction of this letter and our previous letter to you, the Department issues two kinds of letters. To obtain a letter that is binding on the Department a taxpayer must comply with 2 Ill. Adm. Code 1200.110. Your letters and the information you have provided to date collectively do not meet the requirements of the regulation.

Section 1200.110 requires the taxpayer to submit the following information to obtain a binding letter ruling:

- 1) A complete statement of the facts and other information pertinent to the request. The request must contain a complete statement of all material facts. The material facts include the identification of all interested parties, a statement of the business reasons for the transaction, and a detailed description of the transaction. The request must contain an analysis of the relation of the material facts to the issues.
- 2) All contracts, licenses, agreements, instruments or other documents relevant to the request.
- 3) An identification of the tax period at issue, and disclosure of whether an audit or litigation is pending with the Department.
- 4) A statement that to the best of the knowledge of both the taxpayer and the taxpayer's representative the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, or whether the taxpayer or any representatives previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.
- 5) A statement of authorities supporting the taxpayer's views, an explanation of the grounds for that conclusion and the relevant authorities to support that conclusion.

- 6) A statement of authorities contrary to the taxpayer's views. Each taxpayer is under an affirmative duty to identify any and all authorities contrary to the taxpayer's views. If the taxpayer determines that there are no authorities contrary to his or her views, or taxpayer is unable to locate such authority, the request must contain a statement to that effect.
- 7) An identification of any specific trade secret information taxpayer requests be deleted from the publicly disseminated version of the private letter ruling.
- 8) The signature of the taxpayer or the taxpayer's representative. A taxpayer's representative must also provide a properly executed power of attorney.

The information you have submitted does not meet the enumerated requirements. For example, you have not identified all the interested parties, the statement of facts appears incomplete, all of the agreements between the parties have not been provided, and you have not advised whether an audit is pending with the Department. Because of these and other deficiencies we simply cannot provide a ruling that is binding on the Department and, once again, must respond with a General Information Letter.

If you are not under audit and it remains your desire to obtain a binding Private Letter Ruling regarding your client's factual situation, we recommend that you submit a new request conforming with the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

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