

Whether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. See 2 Ill. Adm. Code 1200.110(a)(4). (This is a GIL.)

March 12, 2008

Dear Xxxxx:

This letter is in response to your letter dated March 7, 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](http://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:

We are writing to request a ruling in regard to the application of Illinois state and local retailers' occupation tax.

FACTS:

COMPANY provides food and facilities management services to institutions in the U.S. and Canada. Among other service lines, COMPANY provides food service to medical institutions (e.g., hospitals). Contracts between COMPANY and the hospitals generally provide for patient meals and cafeteria food service.

COMPANY manages the operations of the cafeteria at a nonprofit hospital, located in CITY, Illinois. See *Attachment A - Exemption Certificate Issued to Hospital of CITY, IL*. Under the terms of the contract, COMPANY manages the cafeteria, among other services, as an agent for the hospital. The cafeteria is set up to serve meals exclusively to hospital personnel, volunteers and patient guests. The cafeteria hours of operation are 6:30 a.m. to 6:30 p.m., seven days per week.

COMPANY does not collect and remit retailers' occupation tax on cafeteria sales based on the understanding that sales from a nonprofit hospital cafeteria which is not 'open to the public' are exempt from state and local retailers' occupation tax in Illinois.

COMPANY does not advertise in any manner that the hospital cafeteria is 'open to the public'.

The Company was recently contacted by a representative of the CITY Finance Department. The Representative made a random visit to the hospital and was served at the cafeteria. Based on this visit, the Representative made the determination that the cafeteria was open to the public. To validate its position that the cafeteria is not open to the public, COMPANY conducted an informal guest survey during all hours of operation for the period from Saturday, January 13, 2007 through Friday, January 19, 2007. The Company believes that this week was representative of its regular operations. The results of the survey are as follow: [sic]

Employee meals	4,750
Volunteer meals	89
Patient & their guests	1,397
<u>Non-Hospital Visitors</u>	<u>46</u>
Total guests	6,282

Based on discussions with the cafeteria personnel, if there was any question, the default position was to count the guest as a non-hospital visitor. Therefore, it is possible that the non-hospital visitors may be overstated. Non-hospital visitors accounted for 0.73% of the cafeteria's business.

#### ISSUE:

Based on the facts as presented above, is the Hospital cafeteria considered to be 'not open to the public' and thus, sales from the cafeteria are not subject to the ROT pursuant to 86 Ill. Admin. Code §130.2005(b) (1)?

#### ANALYSIS AND CONCLUSIONS:

##### **Nonprofit Hospital Cafeteria Exemption**

Illinois retailers' occupation tax (ROT) applies to retail sales of tangible personal property. Illinois Code 35 ILCS 120/2. 'Retail sale' is defined to include, among others, sales of tangible personal property made by persons organized as nonprofit service enterprises, except that sales of tangible personal property by a person organized and operated exclusively for charitable, religious, or educational purposes are not considered retail sales when: a) the sales are to its members, students, patients or inmates for use primarily by the members, students, patients or inmates; or b) the tangible personal property sold is not sold or offered for sale by persons organized for profit. 35 ILCS 120/1. In addition, Ill. Admin. Code §130.2005(b)(1)(A) provides, in part, that nonprofit hospitals qualifying as charitable institutions are not subject to Illinois ROT on restaurant facilities which are conducted primarily for the benefit of the hospital's employees, and which are not open to the public. However, sales made in a hospital cafeteria which is open to the public are taxable.

The regulations do not define the term 'open to the public'. However, several Private Letter Rulings (PLR) have been issued addressing the requirements for a nonprofit hospital cafeteria to be considered not 'open to the public'. The Department has consistently held that a hospital cafeteria is not 'open to the public' if access to the

cafeteria is restricted to patients, patients' visitors, employees, volunteer workers, and doctors. See PLR ST 96-0488 (November 25, 1996).

Moreover, in PLR 84-0048 (January 20, 1984) and ST 02-0009-PLR, (May 20, 2002), the Department created a safe harbor by adopting a 'margin of error' test to determine whether a nonprofit hospital cafeteria meets the definition of being 'open to the public.' In both rulings, the Department recognized that although efforts were made by the taxpayers to limit the cafeteria sales only to patients, visitors, staff and employees, other individuals were still able to slip into the cafeteria. As a result, the Department ruled that if no more than 2% of the cafeteria sales are made to persons other than staff, employees, patients and visitors, the cafeteria is not considered to be 'open to the public' for purposes of the Illinois ROT. COMPANY conducted an informal survey in January 2007, the result of which demonstrate that less than 1% of the cafeteria guests are persons other than hospital employees, volunteers, patients and patient guests.

Based on the information as provided above, COMPANY respectfully requests a ruling from the Illinois Department of Revenue that COMPANY, as agent for Hospital, is not required to collect the state and local retailers' occupation tax on sales made in the cafeteria, as the cafeteria is not 'open to the public'.

Please be advised that this issue is not under audit by Illinois, nor is it under appeal or protest in any form or fashion within the state.

If you have any questions or need additional information, please contact PERSON.

#### **DEPARTMENT'S RESPONSE:**

Whether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. 2 Ill. Adm. Code 1200.110(a)(4). The Department declines to issue the requested private letter ruling to COMPANY Operations LLC because COMPANY is currently under audit with the Department. Although your letter states that the issue that is the subject matter of the PLR was not subject to audit at the time the letter was written, the auditor is in the best position to review all the facts and determine whether the facts support a finding that the cafeteria is not "open to the public" for purposes of the Department's regulations.

Very truly yours,

Richard S. Wolters  
Associate Counsel

RSW:msk