

Gross receipts from the sale of newspapers and magazines in Illinois are not subject to sales tax. See 86 Ill. Adm. Code Section 130.2015. (This is a GIL.)

April 10, 2008

Dear Xxxxx:

This letter is in response to your letter dated March 31, 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](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:

Pursuant to 86 Ill. Adm. Code Section 130.2105(a)(2) in regard to magazine sales tax exemption it appears that magazines, such as Newsweek, Money, Sports Illustrated, etc, etc...would be exempt as per CPA the Code, '...there is one test that must be met and several other factors to be considered. The test that must be met for a publication to qualify as a magazine is that it must be published periodically in the form of newsprint and ink. Periodically means at least two times per year....'

Question:

1. Our interpretation of 86 Ill. Adm. Code Section 130.2105(a)(2) indicates a magazine, otherwise complying with factors enumerated in Section 130.2105(a)(2), but which is distributed free 10 times per year would qualify for this exemption and would thus not be subject to sales or use tax, is this correct? If not then under what Code Section, if any, would this magazine be exempt?
2. In the alternative, if Illinois believes use tax is due on the distribution of a free magazine as described in #1 above what is the taxable measure? The paper and ink cost of the free magazine or the 'newsstand price' stated but which is not reflective of paper and printing cost.

Furthermore, pursuant to 86 Ill. Adm. Code Section 130.2105(a)(2), in regard to magazine sales tax exemption, if a magazine meets the 'at least two times per year' publication rule and 'a member of the public can subscribe to the publication' it is unclear if what constitutes, 'the basic format of a magazine' is strictly criteria enumerated in the Code stated as, '...including soft covers, individual pages and indexed articles, whether it contains articles and items that have value to the general public, and whether it contains general advertising'.

Question:

1. What specifically establishes, '...contains articles and items that have value to the general public' as found in typical magazines? Specifically what is meant by 'general public'?
2. What is the meaning of 'general advertising' and what other type(s) of advertising would there be? Advertising typically targets a demographic, i.e. under 10, 20, or 30 years of age, gender or race specific, etc... what would be an example of advertising not conforming as 'general advertising'?
3. Would a **free**, soft cover, individually paged magazine that is published and printed outside of Illinois, delivered to Illinois schools via common carrier for distribution to students free of charge once per month during the school year, which contains local and regional indexed articles of sports interest, which can be subscribed to by the general public, and which each publication contains 49% to 50% paid advertising content be exempt from sales and use tax under 86 Ill. Adm. Code Section 130.2105(a)(2)?

If you have any questions are [sic] need further information please contact me.

## **DEPARTMENT'S RESPONSE:**

We are unable to provide you with the specific response you request with the limited information that has been provided and in the context of a General Information Letter. Provided below is information that may help you to determine the taxability of the factual circumstances about which you inquired.

Gross receipts from the sale of newspapers and magazines in Illinois are not subject to sales tax. The Department's regulation regarding sellers of newspapers, magazines and books at 86 Ill. Adm. Code Section 130.2105(a)(2), states that:

[s]ales of newspapers and magazines are not subject to the tax because of the newsprint and ink exemption (see Section 1 of the Act). In determining whether a publication qualifies as a magazine for the purpose of the newsprint and ink exemption, there is one test that must be met and several other factors to be considered. The test that must be met for a publication to qualify as a magazine is that it must be published periodically in the form of newsprint and ink. Periodically means at least two times per year. The other factors to be considered are whether a member of the public can subscribe to the publication, whether the publication is one that has the basic format of a magazine, including soft covers, individual pages and indexed articles, whether it contains articles and items that have value to the general public, and whether it contains general advertising. A publication that has one or more of these

characteristics would be considered to be a magazine, assuming the initial test of periodic publication is met. 86 Ill. Adm. Code 130.2105(a)(2).

See also, *Moody's Investors Service, Inc. v. Department of Revenue* 445 N.E.2d 1331 (Ill. App. 1983), *affirmed* 461 N.E.2d 972 (1984).

Your letter suggests the magazine may be given away free. If this is the case, there may not be any Retailers' Occupation Tax liability. However, 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 86 Ill. Adm. Code 150.201(a).

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 Use Tax or 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](http://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