

A caterer incurs Retailers' Occupation Tax liability from his catering service without any deductions for his costs of doing business. See 86 Ill. Adm. Code 130.410 and 130.2145. (This is a GIL.)

November 18, 2008

Dear Xxxxx:

This letter is in response to your letter dated January 29, 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:

One of my clients, which operates and [sic] banquet and conference center, engage in the sole purpose to host social and corporate function, [sic] I have been getting conflicting advice from both our own paid information source as well IDOR. I would appreciate something in writing, which would clarify if this item should be considered a taxable item.

First, the banquet and conference center provides their client a package in which a per person price includes e.g. food, liquor, and rental of facility; the package price is taxed. In certain situations, their client who want upgraded items such as linens, lighting and specialty products, which the facility does not normally offer, are given the option to either directly go to a rental company, which carries the products, or the banquet and conference center can rent the product for them. Since client would not pay sales tax if they were to rent directly from the rental company and the Center is acting as an intermediary for their clients, we believe that we don't have to collect sales too.

Second part of the questions [sic] is – if company purchase [sic] tangible product – like special chairs (upgraded from standard offered at no charge as part the function), special linen (also upgraded from standard offered at no charge as part of the function), backdrop on the wall and lightning system – and pays sales tax on purchase, could they rent those items tax free to their clients?

I would appreciate if you could provide me with the law and interpretation of the law in everyday language. Also, I have third questions. [sic] If letter ruling comes out and not mentions anything as being retroactive, could that be interpreted that it stands as the day of issuance? I would really appreciate your input on those issues.

Thanks [sic] you for your help in advance if [sic] you have any questions please feel free to contact me with any questions.

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

The Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property for use or consumption. Persons that are engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their gross receipts from such sales. See 86 Ill. Adm. Code 130.2145.

Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. Section 1 of the Retailers' Occupation Tax Act defines the term, "selling price," as the "consideration for a sale valued in money ... without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever...." See, 35 ILCS 120/1. See also 86 Ill. Adm. Code 130.410.

As a result, tax is imposed upon a caterer's entire gross receipts from sale, without any deduction on account of service costs or other overhead costs. A caterer's gross receipts would include all receipts associated with his sale of food. Such costs would include charges for linens, tables, chairs, dishes, glasses, flowers, labor, set-up, and delivery. Each of these items is a part of the cost of doing business as a caterer. It is immaterial that the customer is separately billed for the price of these items. These costs are costs of doing business as a caterer, just as they would be part of the overhead expenses incurred by a restaurant owner.

When a caterer makes separate charges to customers for items which are not associated with the sale of food, such items are not taxable, provided that they are separately listed on the invoice to the customer and are initialed by the customer. This would be the case, for instance, with charges for entertainment (singers, bands, and the like).

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.

Very truly yours,

Richard S. Wolters  
Associate Counsel

RSW:mzk