

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 the Department's regulation entitled "Vendors of Meals" at 86 Ill. Adm. Code 130.2145. (This is a GIL.)

December 12, 2008

Dear Xxxxx:

This letter is in response to your letter dated August 25, 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:

PLEASE CLARIFY, I HAVE BEEN QUESTIONED BY CLIENTS OFTEN ON THESE ISSUES, and IDOR Online Support Center did not answer my initial questions (see enclosed).

1. When I send a Bartender or Staff Attendant to a Client (House Party, Office Party, etc.), with NO FOOD, BEVERAGE, DISPOSABLES, RENTALS, OR DELIVERY FEES. Client is supplying THEIR OWN FOOD OR BEVG, ETC. Is this Client required to pay 'Illinois Sales Tax' on the invoice of 'LABOR' ONLY?
2. If a Bartender or Staff Attendant is hired for Labor, and Client is supplying their own Liquor & Beverages, we Invoice for labor & 'Corkage Fee' (use of our Illinois & City of Chicago Liquor License with 2 million dollar liquor liability insurance). Is this client required to pay 'Illinois Sales Tax' on entire Invoice? It is my understanding that Labor and Corkage fee are intangible items; not 'cost of doing business,' and would therefore NOT be subject to IL sales tax. Is this correct?
3. If a Bartender or Staff Attendant is hired for an event with 'Rentals,' (Tables, Glassware, Linens, etc.; no consumable food or beverage), is this client required to pay 'Illinois Sales Tax' on entire Invoice?

4. When Client rents chairs, tables, or other equipment, but do not hire staff, purchase food or any consumable item, are they to be charged sales tax on 'Rentals' alone?
5. If the Client orders 'Rentals' and wants the equipment delivered, do we charge sales tax on 'Rentals' only, 'Delivery, trucking, fuel charge, and setup fee' only, or on entire invoice?

Am looking forward in hearing from you.

DEPARTMENT'S RESPONSE:

For general information purposes, 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. Such persons specifically include caterers. See 86 Ill. Adm. Code 130.2145.

Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. The term "selling price" is defined under the Retailers' Occupation Tax Act as the "consideration for a sale valued in money . . . and shall be determined 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. As indicated by this definition, a retailer's cost of doing business is not deductible from his gross receipts. This principle is also articulated in 86 Ill. Adm. Code 130.410. The regulation specifically states that in calculating Retailers' Occupation Tax liability, "freight or transportation costs . . . or any other expenses whatsoever" are not deductible from gross receipts.

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 or her sale of food. Such costs would include charges for linens, tables, chairs, dishes, glasses, flowers, labor, set-up and delivery, and corkage fees. 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. They are simply the 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).

If, instead of acting as a caterer, a person rents tangible personal property to others, that person is not acting as a retailer. That person is acting as a lessor. In Illinois, lessors of tangible personal property under a true lease, except for automobiles leased for terms of one year or less, are considered to be the end users of the tangible personal property purchased for leasing purposes. See Section 130.220 and 130.2010. As end users of tangible personal property located in Illinois, lessors incur Use Tax on their cost price of the property. Since lessors are considered the end users of the property and have paid the Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts and the lessees incur no Use Tax liability for the rental charges. In Illinois, a true lease generally has no buy-out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease.

As stated above, lessees do not incur any tax liability in a true lease situation. However, it is typical of true leases to contain contractual provisions stating that the lessees will reimburse the lessors for the lessors' tax costs. This is not a matter of Illinois tax law but of private contractual agreement between the lessors and the lessees. If the lessees agree to such provisions, they are bound to satisfy that duty because of a contractual agreement, not because of Illinois tax law.

As an example, if a person rents a coffee maker to a business that has set up a booth at a convention, the person would be acting as a lessor and incur Use Tax on the cost price of the coffee maker purchased for leasing purposes. If, in connection with that rental, the person sold coffee, cream and sugar to the business occupying the booth, the person would be acting as a retailer, and would incur Retailers' Occupation Tax on the selling price of the coffee, cream and sugar.

Persons who are engaged in activities in which no tangible personal property is transferred do not incur tax liability. The Retailers' Occupation Tax, Use Tax, Service Use Tax and Service Occupation Tax apply only when there is a transfer of tangible personal property.

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.

Very truly yours,

Debra M. Boggess
Associate Counsel

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