

When a retailer takes an item from inventory and makes a gift of it to someone the retailer is the user of the item and incurs a Use Tax liability on his cost price of the item. See 86 Ill. Adm. Code 150.305. (This is a GIL.)

December 16, 2008

Dear Xxxxx:

This letter is in response to your letter dated July 9, 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 advise as to the sales/use tax consequences [sic] on the following transaction.

Facts

Company is a direct selling entity located outside your state.

The company is registered with your state to collect and remit the applicable sales taxes on behalf of its independent business owners selling in your state.

To entice the independent sellers or retail customers of the independent sellers to purchase selected products, the company gives a free sample of the product to use.

The independent sellers or retail customers of the independent sellers are under no obligation to make any purchases.

Questions

Is use tax due on this transaction by the company?

If use tax is due and payable by the company, is the tax computed on the 'Suggested Retail Price', 'Wholesale Price' (the price the product would be sold to the Independent Business Owner) or the 'Cost' of the product to the company?

Thank you for your consideration.

DEPARTMENT'S RESPONSE:

When property is purchased and then given away, the donor has made a taxable use of the property by making such gift. Therefore, it is the donor of the gift who is deemed the end user of the property and who is subject to the Use Tax, rather than the donee. See 86 Ill. Adm. Code Section 150.305(c).

Use Tax liability is calculated on the cost price of the property used in this State or given away in this State. When the property is purchased at retail, the base for calculating Use Tax is the purchase price of the property. If, however, the property is a product produced by that person, the donor's Use Tax liability is calculated on that person's cost price of the materials and products purchased and incorporated into the finished product. See 86 Ill. Adm. Code Section 150.305(b).

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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