

This letter concerns the documentation to be retained by retailers making sales to exempt organizations holding an E-number. See 86 Ill. Adm. Code 130.2005. (This is a PLR.)

October 8, 2009

Dear Xxxxx:

This letter is in response to your letters dated November 11, 2008, and May 27, 2009, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to NAME for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither BUSINESS nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

In your November 11, 2008, letter have stated and made inquiry as follows:

We have been in the retail educational supply business since 8/01/1980. We started with one location and now have four. A large percentage of our retail sales come from schools and teachers. Our question is in regards to tax-exempt sales to schools and teachers.

We have always been of the understanding that in order to be eligible for tax-exempt status, both the schools and the teachers are required to prove that their purchases are exempt from sales taxes...and they must present a tax-exempt letter to us at the time of their purchase. In addition, we have always kept a 'sales tax log' for tax-exempt sales which includes the signature of the authorized tax-exempt purchaser and their Illinois tax-exempt number.

We are also aware that oftentimes many of our schools give a certain amount of money each year to their teachers to be used for their classrooms and curriculums. In these cases, we believe that these purchases would qualify as being tax-exempt.

On the other hand, we also know that most of our teachers spend personal dollars from their paychecks to enhance their students' learning experience and opportunities. Although this is very admirable and we applaud their sacrifice, we are also of the understanding that we are to collect sales tax in these situations. Of course, if the teacher has their school's tax-exempt letter with them at the time of their purchase, that verifies that the school is reimbursing them; then we follow our tax-exempt procedure outlined above...and they are tax exempt.

We have been very careful and strict in following these guidelines because we were audited several years ago and the 'rules' we have outlined above were explained to us by our auditor. Unfortunately, the problem we have been experiencing is that many of our competitors are not playing by or enforcing the same rules! We have had situations where some of our customers (teachers) have become very upset with our clerks and have abandoned carts full of products at our sales counter because we do not 'bend' the rules. They may also decide to still make their purchase but also oftentimes promise never to come back to our store as 'they will shop elsewhere'! If they don't have the tax-exempt letter from their school or authorized organization, we charge the sales tax. (We do offer a refund of the sales tax if they bring in their letter verifying reimbursement within a certain time frame).

On the other hand, our competitors are simply keeping the schools tax-exempt letters and identification numbers on file and anyone who teaches at that school only has to 'supposedly' bring the tax-exempt letter in once, or mention that they teach at 'that' school...and that is it. All subsequent purchases thereafter are tax-exempt. The teacher is only required to sign the tax-exempt log...and does not have to produce their tax exempt letter for all subsequent purchases!

We simply want to 'compete' on a level playing field. As you know, unlike some of the 'big box' stores, we small retailers do not get to keep some of the sales tax dollars we collect to help reimburse us for the 'costs' of collecting the state's sales tax dollars! That too is not only discriminatory...it's unfair! That is another issue we would like you to address in your response to our questions.

In past years, we have attempted to clarify these questions via phone calls to your staff. Unfortunately, we have received conflicting information. For example, we spoke to one of your representatives by the name of Douglas at 1-847-294-4200 (our local division) on or about 8-17-08. He told us 'off the record' that tax exemption was done on the honor system and that 'customers' could be committing fraud if proof could be shown that their purchases were indeed not tax-exempt eligible (i.e. not reimbursed or purchased with school funds). He basically stated that we and our competition, were both technically 'doing it right'!

My wife, who founded our business in 1980, was a school teacher for nine years prior to opening her business. We do appreciate and understand how hard teachers work and the fact that many of our dedicated teacher customers spend their own money to help their students and to provide a 'richer' learning experience. Please believe us when we tell you that we would prefer not to have to charge them sales tax at all...whether they

are truly spending their own money or are actually being reimbursed by their schools. It would be wonderful if we could eliminate the paperwork, the exempt letter requirements and the signatures!

Perhaps one of our legislators could step up and introduce a bill to such effect? Our teachers would be very appreciative...and so would we! In the meantime, please let us know in writing (Private Letter Ruling) how we and our competitors are to be handling sales tax exempt transactions. We want to be able to inform our customers what the law states and then we want to follow the law. We also want our competitors to be held accountable as well...and to play by the same rules!

Thank you for your time and consideration.

In your May 27, 2009, letter you have stated and made inquiry as follows:

We are enclosing a copy of our original letter dated November 11, 2008 requesting a private letter ruling concerning collection of sales tax for our business. We received a letter from you dated January 6, 2009 that verified that you were in receipt of our letter dated November 11, 2008. You also further explained that you were experiencing a backlog and you were hoping to send us a response 'soon'.

In addition, I attempted on several occasions to call your phone number listed in your letter which is 217-782-3336. All I ever get is fast busy signal.

I would truly appreciate a quick response at this point in time as we are coming into another back-to-school season. I want to ensue that we are being treated fairly with other competing businesses in our area as it applies to the concerns I outlined in my previous letter concerning the collection of sales tax. We are a specialty educational supplies business and most of our customers are teachers, school districts, etc., and many are tax-exempt from sales taxes.

We are currently asking every one of our customers to bring in a copy of their tax-exempt letter every time they make a purchase in order to receive exempt status. In addition, they must also sign the log book that claims they are exempt. Many of our competitors are simply keeping the school's or institutions's [sic] federal I.D. and tax-exempt letter on file and anyone coming in to make a purchase that states they are from that particular institution or school, is receiving tax-exempt status as it applies to sales tax. We want to verify that this is a procedure that we can also be allowed to follow. We will still require that anyone who is claiming tax-exempt status sign the log book to verify that they are being reimbursed with school funds or otherwise in order to receive exemption on sales tax collection.

Please advise at your earliest convenience. We do not wish to continue to put our business in jeopardy nor do we want to treat our customers unfairly as compared to other competitors. We look forward to a quick response since this matter has been pending in excess of six months. We thank you for your assistance and look forward to a favorable response and a favorable private letter ruling.

**DEPARTMENT'S RESPONSE:**

Organizations that are recognized as non-profit under Internal Revenue Code Section 501(c)(3), are not necessarily exempt organizations pursuant to Illinois tax law. Such organizations must obtain an exemption identification number (an "E number") to qualify. See 86 Ill. Adm. Code 130.2007. Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an E number. The E number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that currently only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

All sales to an exempt entity holding an E number must be documented. See the Department's regulation at 86 Ill. Adm. Code 130.810(b) which states:

"To support deductions made on the tax return form, as authorized under the Act, on account of receipts from isolated or occasional sales of tangible personal property, on account of receipts from sales of tangible personal property for resale, on account of receipts from sales of tangible personal property made within the protection of the Commerce Clause of the Constitution of the United States, on account of receipts received by the seller from sales made to any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, on account of receipts received by the seller from sales made on or after March 21, 1963, to any governmental body or on any other ground, entries in any books, records or other pertinent papers or documents of the taxpayer in relation thereto shall be in detail sufficient to show the name and address of the taxpayer's customer in each such transaction, the character of every such transaction (whether it is a sale for resale, a sale made within the protection of the Commerce Clause of the Constitution of the United States, an isolated or occasional sale, etc.), the date of every such transaction, the amount of receipts realized from every such transaction and such other information as may be necessary to establish the nontaxable character of such transaction under the Act."

The Department's regulations further provide that:

"When a seller claims exemption from the Retailers' Occupation Tax for receipts received by the seller from his sale of tangible personal property to a corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, the seller should include such receipts in his Retailers' Occupation Tax return form, but then should deduct such receipts on the line provided for that purpose in the return form." 86 Ill. Adm. Code 130.2005(r)(1).

"Sellers claiming the benefit of this exemption are cautioned against laxity in claiming the benefit of this exemption without verifying the status of the purchaser since the seller will have the burden of proof in establishing his right to any such claimed exemption. The Courts have held repeatedly that the burden of sustaining a right to tax exemption is on the person claiming such exemption." 86 Ill. Adm. Code 130.2005(r)(3).

The procedure a retailer follows to sustain this burden and sufficiently support the deductions from gross receipts for sales made to an exempt organization will vary slightly, though, depending on whether (1) the purchaser pays by check from the exempt organization, (2) the exempt organization

is directly billed, or (3) the purchaser pays by some other method. Where the exempt organization is not directly billed or the purchaser is not paying by a check from the exempt organization, the retailer has the additional obligation to verify that the purchaser is authorized to make purchases on behalf of the exempt organization in furtherance of its organizational duties (e.g., look at the list furnished by the exempt organization, on the organization's letterhead, listing the names of the individuals authorized to make purchases on its behalf). In all three instances, however, the retailer must maintain a copy of the letter from the Department containing the exempt organization's active E-number in his books and records.

If you comply with the following procedures, you will have sufficiently supported the deductions from gross receipts for sales made to an exempt organization:

- (1) The retailer must:
  - (A) retain a copy of the letter from the Department, containing the exempt organization's active E-number in his books and records; and
  - (B) maintain a log book wherein
    - (i) the purchaser records and signs his or her name, and
    - (ii) the retailer records the invoice or receipt number or other information that identifies what is being purchased, and the check number and source of check (if payment was made by check).
- (2) However, in addition to the requirements of paragraphs (1) and (2) , if the purchaser pays by some method other than by a check from the exempt organization or if the exempt organization is not directly billed, the retailer must verify that the purchaser's name is on a list furnished by the exempt organization (on the exempt organization's letterhead) indicating that the purchaser is authorized to make purchases on the exempt organization's behalf in furtherance of its organizational purposes.

Note, though, depending upon the purchaser's use of the tangible personal property purchased, the purchaser may owe Use Tax. Specifically, if the tangible personal property purchased is not used in furtherance of the exempt organization's organizational purpose, the purchaser may owe Use Tax.

Also, for your information, prompt payment discounts are allowed when a return is filed and the tax is paid on time. The retailer is entitled to a discount equal to 1.75% of the tax due. See the Department's regulation at 86 Ill. Adm. Code 130.501(b)(4)(A), which can be found on the Department's website.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax

laws, 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,

Terry D. Charlton  
Chairman, Private Letter Ruling Committee

TDC/DMB:msk