

When a person acts as an agent for a known or disclosed principal and sells tangible personal property for the disclosed principal, the agent does not incur Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.1915. (This is a PLR).

June 25, 2009

Dear Xxxxx:

This letter is in response to your letter dated December 17, 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.

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 CLIENT, 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 CLIENT, 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:

This request for a Private Letter Ruling relating to Illinois Retailers' Occupation Tax is submitted pursuant to 2 Ill. Adm. Code 1200.110 on behalf of my client (hereafter the 'business', 'agent' or 'disclosed agent'), an S-Corporation, with a single location CITY, Illinois. This request includes all relevant information required by 2 Ill. Adm. Code 1200.110 (b) (1-8) to render an opinion, and attached hereto is an executed form IL-2848 appointing this accounting firm to represent the business in connection with this request.

STATEMENT OF MATERIAL FACTS:

CLIENT was incorporated in the state of Illinois on January 2, 2008, for the purpose of selling designer GARMENTS on a consignment basis. The business acts as agent of the garments' owners (hereafter 'principles' or 'consignors') in the sales, and the principal retains ownership of the item until the garment is sold. Any unsold items are returned to the original owner or donated after a specified period of time, which is agreed upon in the initial acceptance contract.

The principals' information is conspicuously and fully disclosed on the garment bag for each GARMENT that is for sale, and to the best knowledge of the agent and the agents [sic] representatives, the principles [sic] are not in the business of selling their clothing at retail. In addition, each item is given a unique identification number, and the principal's name, address and other relevant information is permanently maintained in the agents [sic] books and records.

Listed below are the detailed acceptance procedures followed by CLIENT when the business receives a GARMENT for consignment:

- When a GARMENT is accepted an original signed contract is filed in the corporation's consignment files, by month of consignment. (See copy of contract attached to this letter as Exhibit A.) Note that the contract specifically states that the business is not responsible for any loss due to casualty, as the business is not assuming ownership of the GARMENT.
- The principals [sic] name, full address, email and telephone number are included in the company contact database, along with a written description and picture of the GARMENT. This information becomes a permanent record of the business.
- The GARMENT is given a unique identification number that corresponds to the date the GARMENT was accepted for consignment. This number is entered into the contact database, and the company's sales tracking system.
- The GARMENT is then placed in a clear garment bag, and a sales tag is conspicuously attached to the bag. This tag lists the unique identification number, a description of the GARMENT, the price, and the principals [sic] name, city and state. This information is open to inspection by all prospective purchasers. (See copy of sample sales tag attached to this letter as Exhibit B.)
- When a GARMENT is sold, the item is inactivated in the sales tracking system, and a check for 50% of the sales price is sent to the consignor on the 15th day of the following month. (All original information is permanently maintained in the business' contact database.)
- In the event that a GARMENT does not sell within a specified period of time (agreed to in the initial signed contract), the GARMENT is either returned to the principal, or donated to a pre-agreed upon charity as a donation on behalf of the principal. (Any shipping and/or other incidental costs related to the return or donation of the GARMENT are paid for by the consignor.) The item is then inactivated in the sales tracking system, and the original information is retained as a permanent record in the business' contact database.

TAX PERIOD AT ISSUE/REQUIRED STATEMENTS:

The tax periods at issue are the calendar years 2008 and 2009, and any subsequent period(s) that the business sells consignor items for disclosed principals who are not in the business of selling related items at retail.

Neither an audit nor litigation is pending with the Illinois Department of Revenue ('Department') involving CLIENT or any related taxpayer, and to the best of our

knowledge and that of the business, (i) the Department has not previously ruled on the same or similar issues presented for this business or any predecessor of the business, and (ii) neither the business nor any representatives of the business have previously submitted the same or similar issue to the Department but withdrew it before a letter ruling was issued.

In addition, we have found no authority contrary to the views expressed below.

STATEMENT OF AUTHORITIES AND ANALYSIS:

Per review of 86 Ill. Adm. Code 130.110 'Occasional Sales', it appears the sale of consignment items on behalf of a seller that is not in the business of selling items for resale/retail constitutes an occasional sale, and therefore does not incur Retailers Occupational Tax:

(Subsection 130.110 (a)) 'Since the act does not impose a tax upon persons who are not engaged in the business of selling tangible personal property, persons who make isolated or occasional sales thereof do not incur tax liability.'

GIL ST-07-0133 dated 10/02/2007 entitled 'OCCASIONAL SALE' goes one step further, stating that '...Occasional sales are sales in which the items being sold were first purchased for use by the seller and are no longer needed.' Such is the case with the GARMENTS that the agent is selling on behalf of the principal/brides.

Furthermore, per review of 86 Ill. Adm. Code 130.1915 (b) 'Auctioneers and Agents: When Principal is Disclosed', the businesses [sic] current method of disclosing agents appears fulfill all of the Department of Revenues requirements for full disclosure:

(Subsection 130.1915 (b)) '...a principal is deemed to be disclosed to a purchaser for use or consumption only when the name and address of such principal is made known to such purchaser at or before the time of sale and when the name and address of the principal appears upon the books and records of the auctioneer or agent. ...Acceptable evidence of disclosure includes:

(Subsection 130.1915(b)(5) 'other methods that provide a permanent, written record of the disclosure of the names and addresses (city only is sufficient) of the principals.'

While there appear to be no current Letter Rulings or General Information Letters (GILs) that relate specifically to consignment stores, we have identified two current GILs that appear to affirm our position that Retailers Occupational [sic] Tax is not due for sales relating to a disclosed principal it relates to occasional sales.

The first a GIL, is dated 10/2/2007 (ST 07-0133-GIL) entitled 'OCCASIONAL SALE', with comments written by Terry D. Charlton, Senior Counsel, Sales & Excise Taxes:

...if the auctioneer or agent is acting on behalf of a known or disclosed principal, the sale of the tangible personal property is taxable to the principal and not the auctioneer or agent. A principal is deemed to be disclosed to a purchaser for use or consumption only when the name and address of such principal is made known to such purchaser at or before

the time of sale and when the name and address of the principal appears upon the books and records of the auctioneer or agent.

...Please be advised, however, that if the tangible personal property being sold would constitute an occasional sale by the disclosed principal, then the sale is not considered a taxable retail sale.

The second GIL., dated 10/15/08 (ST 08-143-GIL) entitled 'NEXUS', contains comments written by Richard S. Wolters, Associate Counsel:

When auctioneers or agents are involved in selling activities, the person who is liable for Retailers' Occupation Tax will depend on whether the auctioneer or agent is working on behalf of a disclosed or undisclosed principal...This rule also applies to consignment transactions. ...if the auctioneer or agent is acting on behalf of a known or disclosed principal, the sale of the tangible personal property is taxable to the principal and not the auctioneer or agent.

A principal is deemed to be disclosed to a purchaser for use or consumption only when the name and address of such principal is made known to such purchaser at or before the time of the sale and when the name and address of the principal appears upon the books and records of the auctioneer or agent. Please be advised, however, that if the tangible personal property sold would constitute an occasional sale by the disclosed principal, then the sale is not taxable.

In summary: 1) since sales of the consignment GARMENTS are occasional sales made by an agent acting on behalf of a principal who is not in the business of selling such property at retail, AND 2) the item for sale is uniquely identified with the information of the principal fully disclosed to the purchaser at/before the time of sale AND 3) the name, address and other relevant information of the principal is permanently maintained in the agents books and records, we believe that the consignment sales in question are to be treated as occasional sales by an agent of a disclosed principal, and therefore the agent is not required to collect Retailers [sic] Occupation Tax for the sales of the consigned items.

RULING REQUESTED:

On behalf of CLIENT, we respectfully request that the Illinois Department of Revenue, on the basis of the facts and law set forth above, issue a Private Letter Ruling confirming that the previously described set of procedures for identifying items for sale and disclosing principals is sufficient, and affirming that CLIENT is not liable for collecting Illinois Retailers [sic] Occupation Tax on the related consignment sales.

In addition, we request that the Private Letter Ruling be effective for calendar years 2008 and 2009, and any subsequent tax period(s) that the business sells consignor items for disclosed principals, who are not in the business of selling related items at retail.

Thank you for your consideration of this Private Letter Ruling request. If you need additional information, please contact me at the above address.

We anxiously await your reply.

DEPARTMENT'S RESPONSE:

Subsection (a)(2) of the Department's regulation, 86 Ill. Adm. Code 130.1915 Auctioneers and Agents, states:

"The receipts from any such sale, when made by an auctioneer or agent who is acting for a known or disclosed principal, are taxable to the principal, provided the principal is engaged in the business of selling such tangible personal property at retail. For a sale to qualify under this subsection(a)(2), the principal must be clearly disclosed to the purchasers by the auctioneer or agent so that the purchasers are able to determine who owns the goods that are being sold."

Section (b) states:

"For the purposes of this Section, a principal is deemed to be disclosed to a purchaser for use or consumption only when the name and address of such principal is made known to such purchaser at or before the time of the sale and when the name and address of the principal appears upon the books and records of the auctioneer or agent. A verbal announcement of the principals' names at the auction is not sufficient to document disclosure."

As you have noted in your letter, Section 130.1915 of the Department's rules applies to consignment sales.

Your letter makes the following factual representations: the principal, or consignor, retains ownership of the GARMENT; the principal's name, city and state is conspicuously and fully disclosed on the garment bag of each GARMENT consigned to the CLIENT; and the principal's name, address and other relevant information is permanently maintained in the CLIENT's books and records.

Based on these factual representations, it is the Department's position that CLIENT is not required to remit to the Department Retailers' Occupation Tax on GARMENTS sold on consignment by it. CLIENT also is not required to collect Use Tax from purchasers of GARMENTS sold on consignment by it.

The Department is not ruling on the principals' or consignors' Retailers' Occupation Tax liability. The liability of the principals or consignors depends on whether they are retailers or making occasional sales. See 86 Ill. Adm. Code 130.110 regarding "Occasional Sales." The Department also is not ruling on whether the purchasers incur Use Tax liability because a purchaser's Use Tax liability on any given sale depends on whether the principal is a retailer or making an occasional sale.

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 or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

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Enc.