

Sales of memberships generally are not subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code Part 130.101. (This is a GIL.)

March 17, 2009

Dear Xxxxx:

This letter is in response to your letter dated November 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:

This letter is to request a formal written opinion on the taxability [sic] Club memberships that have additional benefits and features attached to them. The facts are as follows:

Illinois Department of Revenue Regulation 130.401(d) exempts Club memberships:

Membership fees are not gross receipts from the sale of tangible personal property. Membership fees are gross receipts in exchange for an intangible. For example, when membership fees 'buy' purchasers the right to purchase products at wholesale, but are not applied to the purchase price of tangible personal property, they are not subject to sales tax.

Our Club memberships have various additional features such as access to discount on services such as higher percentages of cash back on purchases paid for with a Club Discover Card, healthcare related discounts such as percentages off of select medical services, prescription drugs and health insurance premiums. In addition, there are discounts on financial services such as special pricing on automobiles, boats and recreational vehicles and personal services such as check printing, roadside assistance, travel services and service agreements. Additional discounts may be available based on the type of membership purchased. These discounts automatically come with the membership, regardless of whether the member decides to take advantage of them. The prices of these features are not a part of the sale price of the membership but an additional expense to the member.

Does the addition of these features, access to services and discounts make the otherwise non-taxable membership taxable?

We respectfully request your help in establishing the tax status of these types of memberships.

DEPARTMENT'S RESPONSE:

The Department cannot provide a specific answer to your request based on the limited facts presented regarding the additional "discounts" or services provided with the membership.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then neither Illinois Retailers' Occupation Tax nor Use Tax would apply. Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to customers incident to the services being provided then no Illinois Service Occupation Tax nor Service Use Tax would apply.

Generally, the Department does not consider receipts from the sale of membership fees to be gross receipts from the sale of tangible personal property. Rather, a membership fee is considered an intangible, which is not subject to Retailers' Occupation Tax or Use Tax liability. 86 Ill. Adm. Code 130.401(d). This is the case when the sale of membership rights does not include the transfer of tangible personal property. However, if the membership charge entitles the customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to that service, then that charge may result in either Retailers' Occupation Tax liability, Service Occupation Tax liability or Use Tax liability, depending upon the serviceman's activities. See 86 Ill. Adm. Code 140.101.

Please note that sales of discount cards generally are not taxable under the Retailers' Occupation Tax Act. See ST 06-0163 (GIL).

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,

Richard S. Wolters
Associate Counsel

RSW:msk