

Cook County liquor tax is a tax on the consumer and is therefore deductible from a retailers gross receipts in calculating Retailers' Occupation Tax liability. 86 Ill. Adm. Code 130.435. (This is a GIL.)

March 23, 2009

Dear Xxxxx:

This letter is in response to your letter dated February 3, 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 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:

I would like an advisory opinion on the following question relating to several liquor chains in Cook County charging Illinois sales tax on Cook County liquor tax.

As I read 86 Ill. Adm. Code Sec. 130-445, Illinois sales tax gross revenues on the appropriate Illinois sales tax reporting form permits the retailer to deduct the amounts paid by the customers for Cook County liquor tax from the gross receipts line for purposes of computing the Illinois sales tax due.

In my opinion, the inclusion of Cook County sales tax in the gross receipts for purposes of computing the Illinois sales tax due is improper.

Would you please give me an advisory opinion on this.

Thank you.

DEPARTMENT'S RESPONSE:

In your letter you reference the Department's regulation at 86 Ill. Adm. Code 130.445, which speaks to when federal taxes paid may be deducted in computing Retailers' Occupation Tax liability.

From the context of your letter, however, it seems Section 130.435 would be more applicable. Accordingly, for purposes of this response, I will assume you mean 130.435, which speaks to, in relevant part, Illinois and Cook County Liquor Gallonage Taxes and direct your attention thereto.

Section 130.435, provides in relevant part:

“No amounts shall be deducted from gross receipts on account of the taxes imposed by The Liquor Control Act of 1934 in computing Retailers' Occupation Tax liability on retail sales of alcoholic beverages. That is true because the legal incidence of these taxes is on the manufacturer or importing distributor and not on the consumer. The retailer does not act, in any legal sense, as a collector of these taxes even though he shifts the economic burden of them to the consumer. Since the legal incidence of the Cook County Liquor Gallonage Tax is on the consumer, with the seller acting merely as a collector of the tax for the county, amounts collected because of the Cook County Liquor Tax are not considered to be a part of the liquor retailer's receipts that are subject to Retailers' Occupation Tax.” See 86 Ill. Adm. Code 130.435(b). See also 86 Ill. Adm. Code 130.2060(a), which can be found on the Department's website.

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,

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Associate Counsel

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