

Organizations that the Department of Revenue has determined to be exclusively religious, educational, or charitable and have been issued an exemption identification number (an "E" number) are allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

March 26, 2009

Dear Xxxxx:

This letter is in response to your letter dated June 30, 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.

In your letter you have stated and made inquiry as follows:

This office represents the CHURCH, an Illinois not-for-profit corporation (herein the 'Church'), whose principal office is located in CITY, Illinois. This letter requests a private letter ruling pursuant Section 1200.110 of the Illinois Department of Revenue Regulations. Enclosed please find a [sic] Illinois Department of Revenue Power of Attorney, Form IL-2848, running in favor of the undersigned.

I. Ruling Requested:

Whether the above-referenced taxpayer is exempt from collection of the Retailers' Occupation Tax pertaining to its sale of tangible personal property to its members and non-members?

II. Statement of Facts:

A. Taxpayer Information:

The taxpayer is the CHURCH, an Illinois not-for-profit corporation. The taxpayer's principal business address is ADDRESS. The taxpayer's Illinois Exemption Identification Number is #.

B. Detailed Description of the Taxpayer:

The Church is an Illinois a not-for-profit corporation organized under Illinois law in good standing, and it is a religious organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, as amended.

Attached please find copies of the Articles of Incorporation, By-laws and the determination letter issued by the Internal Revenue Service regarding the taxpayer's federal tax-exempt status.

The taxpayer is one of many churches within and without the United States which have been and will be organized for the purpose of the religion of BELIEF. The Church conducts religious activities, including services, ceremonies, and education for its members.

With regard to its activities and in furtherance of the Church's exempt purposes and functions, the Church sells items of tangible personal property regarding its history, tenants and religious beliefs. The items of tangible personal property include: audio tapes, video tapes, books, compact discs, DVDs and other religious educational materials (herein collectively referred to as 'religious educational materials').

Currently, the Church collects and remits Retailers' Occupation Tax with regard to its sales at retail of religious educational materials to its members. The Church also collects and remits Retailers' Occupation Tax with regard to sales at retail to non-members.

C. Business Reason for the Transactions and a Description of Facts Relating to the Transactions:

- (1) Is the Church required to collect Retailers' Occupation Tax on its sales of religious educational materials at retail to its members?

The Church currently sells its religious educational materials to members. The Church has been charging sales tax on all such sales and remitting the sales tax to the Illinois Department of Revenue. The Church seeks a ruling whether it is completely exempt from collecting Retailers' Occupation Tax on such sales pursuant to 86 Illinois Administrative Code Section 130.2005(a)(2).

- (2) Is the Church required to collect Retailers' Occupation Tax on its retail sales of its educational materials to non-members?

The Church also offers for sale at retail its religious educational materials to non-members. The vast majority of such religious educational materials are not available at other commercial retail book stores and/or video stores. Non-members who purchase such religious educational materials are generally interested in learning about the Church's religious beliefs and practices. The Church seeks a ruling whether it is completely exempt from collecting Retailers' Occupation Tax on such religious educational materials to non-members pursuant to 86 Illinois Administrative Code Section 130.2005(a)(3) or other applicable section.

III. Statement of Supporting Authorities and Analysis:

Generally, retail sales are taxed under 86 Illinois Administrative Code Section 130, et. sec, subject to certain exceptions. Specifically, Section 130.2005(a)(2) provides as follows:

The first exemption is that the sales by such an organization are not taxable if they are made to the organizations members, or to its students in the case of the school or to its patients in the case of a non profit hospital which qualifies as a charitable institution, primarily for the purposes of the selling organization.

Additionally, Section 130.2005(a)(3) provides as follows:

The second exemption is that sales by exclusively charitable, or religious or educational organizations are not subject to the Retailers' Occupation Tax and can be said that selling is noncompetitive with business establishments.

With regard to such noncompetitive sales, the Attorney General's office has laid down the following tests for determining that such selling is noncompetitive: (1) the transactions are conducted by members of the charitable entity and not by any franchise or licensee, (2) all the proceeds go to the charity, (3) a transaction must not be a continuing one but rather shall be held either annually or a reasonably small number of times within a year; (4) the reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a charitable contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the charity.

With regard to the sales of religious educational materials to its members, the Church contends that such sales should be exempt from Retailers' Occupation Tax. The religious educational materials pertain directly to the history and tenants of the organization's religious beliefs and sales are made in furtherance of the church's religious and educational purposes and functions.

With regard to the sales at retail of religious educational materials to non-members, the Church contends that such retail sales are also exempt from Retailers' Occupation Tax because the religious educational materials pertain directly to the Church's religious and exempt purposes and the Church does not compete with commercial bookstores and/or video stores. For example, in ST 07-0005-PLR, dated September 26, 2007, the Department held that an exempt organization's sales of condoms and emergency contraceptive drugs competed with pharmacies and was thus subject to tax. In the instant matter, however, sales of such religious educational materials does not compete directly with commercial bookstores and/or video stores, because such religious educational materials are generally not available elsewhere.

IV. Statement of Conflicting Authorities and Analysis:

Both the taxpayer and the taxpayer's representatives are not aware of any precedential authority which is directly contrary to the ruling requested herein.

V. Conclusion:

The Church is a religious organization with an E number as issued by the Illinois Department of Revenue. Its sales of religious educational materials to members and non-members further the religious and charitable purpose for which the Church was created. As such, all sales of tangible personal property at retail of such religious educational materials to members should be exempt from the Retailers' Occupation Tax liability under 86 Illinois Administrative Code Section 130.2005(a)(2) with regard to members and pursuant to Section 130.2005(a)(3) with regard to non-members.

Should you have any questions or require additional information, please contact the undersigned.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Private Letter Ruling Committee recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. However, we hope the following will be helpful in addressing your questions.

The Illinois Retailers' Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101.

Organizations making application to the Illinois Department of Revenue and determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). This number evidences that the Department recognizes the organization as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purpose. If an organization does not have an "E" number, then its purchases are subject to tax. Only sales to organizations holding the "E" number are exempt, not sales to individual members of such organizations. Please refer to 86 Ill. Adm. Code 130.2007 for guidance on application for an "E" number.

Organizations that have an "E" number are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. The limited exceptions available to not-for-profit organizations described in 86 Ill. Adm. Code 130.2005 include: (1) Sales to Members (see 86 Ill. Adm. Code 130.2005(a)(2)); (2) Noncompetitive Sales (see 86 Ill. Adm. Code 130.2005(a)(3)); and (3) Occasional Dinners and Similar Activities (see 86 Ill. Adm. Code 130.2005(a)(4)).

Thus, if the E-number holder makes sales to both members and nonmembers, then it would not qualify for that part of the exemption concerning sales to members. Further, if any of the materials the E-number holder sells are available through business establishments, then its sales would be in competition with business establishments and, thus, it would not qualify for that part of the exemption concerning noncompetitive sales and, as such, its sales would be taxable. Lastly, turning to the third part of the exemption, Occasional Dinners and Similar Activities, the Department's regulation provides, in part, that a religious organization may "occasionally" conduct certain activities they may not be subject to tax whether or not such activities are open to the public. Further, the

regulation defines “occasional” to mean not more than twice in any calendar year. 86 Ill. Adm. Code 130.2005(a)(4).

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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