

This letter concerns tax imposed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

March 31, 2009

Dear Xxxxx:

This letter is in response to your letter dated August 1, 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:

I am writing to request clarification on your regulation regarding Retailer' [sic] Occupation Tax and Service Occupation Tax. I am an optometrist in the state of Illinois who provides services and also sell [sic] prescription glasses and contact lenses and non-prescription items, such as lens cleaners, to consumers. I understand that the services I provide is exempt for sales tax and any non-prescription items, such as lens cleaners, are subject to a higher tax rate. However, I need to [sic] clarification on whether prescription glasses and/or contact lenses should be tax exempt or should be taxed at the lower tax rate.

In Section 140.126 C1 regarding **Service Occupation Tax** it states: *The prescription eyeglasses, however, are medical appliances subject to the 1% rate.'*

However in Section 130.1980 B regarding **Retailers' Occupation Tax** it states: *'Consequently, they (optometrist) [sic] are not require [sic] to remit Retailers ' Occupation Tax measured by their receipts from engaging in such professions, including receipts from both services and tangible personal property transferred incident to those services.'*

And also in Section 130.310 C2 regarding what items qualify for the 1% tax rate it states: *'Corrective medical appliances such as hearing aids, eyeglasses and contact lenses qualify for exemption'*

Also in your letter ST 03-0020-PLR in the Discussion section it states: '*Optometrists are primarily engaged in the sale of a service and are thus treated as servicepersons and do not incur ROT on their receipts from sales of prescription eyewear.*'

So it seems like the sale of prescription eyeglasses and/or contact lenses are exempt from the 1% Retailers' Occupation Tax. Therefore, I am confused as to whether I should apply a 1% tax rate to the consumers in prescription eyeglasses and/or contact lenses based on the information above.

If you would please clarify for me the following:

1. What taxes I should collect, if any, from consumers regarding the sale of prescription eyewear and/or contact lenses?
2. If I purchase items for resale from business [sic] outside IL and **do not** get charged taxes on these items (but I also **do not** charge taxes on consumers when I sell the items to the consumers) what additional taxes, if any, do I need to file to the IL Department of Revenue when I file my monthly IL sales and use tax?
3. If I purchase items for resale from business [sic] outside IL and **do not** get charged taxes on these items (but **do** charge taxes on consumers when I sell the items to the consumers) what additional taxes, if any, do I need to file to the IL Department of Revenue when I file my monthly IL sales and use tax?
4. If I purchase items for resale from business [sic] outside IL and **do** get charged taxes on these items do I need to file any additional taxes to the IL Department of Revenue when I file my monthly IL sales and use tax?

I am a new business owner/optometrist so am unfamiliar with Illinois Sales Tax rules and regulation [sic] so if you could please clarify the above questions that would be greatly appreciated. Thank you in advance for [sic] time in this matter. If you need to contact me for any concerns or questions, you can reach me.

DEPARTMENT'S RESPONSE:

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. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (*i.e.* servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The serviceman's liability may be calculated in one of four ways: (1) separately-stated selling price of tangible personal property transferred incident to service; (2) 50% of the

servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately-stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

Prescription and non-prescription medicines, drugs and medical appliances, for human use, are not exempt from tax. A tax is imposed on these items at the rate of 1%. 35 ILCS 120/2-10; 86 Ill. Adm. Code 130.310(a). A medical appliance is an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the human body. These items may be prescribed by licensed health care professionals for use by a patient, purchased by health care professionals for the use of patients, or purchased directly by individuals. Corrective medical appliances such as eyeglasses and contact lenses qualify for exemption. See 86 Ill. Adm. Code 130.310(c)(2). These rules apply to retailers as well as serviceman. See 35 ILCS 115/3-10; 86 Ill. Adm. Code 140.126.

When optometrists sell tangible personal property to purchasers for use or consumption apart from their rendering of service as optometrists, they incur Retailers' Occupation Tax liability. This is the case, for example, where optometrists sell spectacles, frames or mountings, without examination or treatment of the eyes, to purchasers for use or consumption, or where optometrists sell such items as sun glasses, cleaning solutions for lenses, or other tangible personal property to purchasers for use or consumption apart from their rendering of service. See 86 Ill. Adm. Code 1980(a).

When health care professionals such as optometrists render service, they are not subject to Retailers' Occupation Tax liability. They are, however, subject to liability under the Service Occupation Tax Act to the extent they transfer tangible personal property incident to their rendering of service. Servicemen incur tax liability in these transactions under one of the four methods described above

What this all means for an the optometrist at or above the 35% threshold is that the optometrist may purchase the eyeglass components with a resale certificate, and the optometrist would pay Service Occupation Tax at the 1% rate under the first or second methods described earlier (see Section 140.106). If the optometrist is below the 35% threshold, he or she may pay Service Occupation Tax at the 1% rate on either his or her cost price as described in Section 140.109, or on his or her selling price as described in Section 140.106. If he or she is a de minimis serviceman incurring Service Occupation Tax liability on his or her cost price, he or she should provide his or her suppliers with Certificates of Resale.

It appears from the information provided in your letter that you are registered to collect and remit Retailer's Occupation Tax on sales of tangible personal property. Servicemen required to be registered with the Department under Section 2a of the Retailers' Occupation Tax Act may not use the fourth method for calculating their tax liability.

For determining the tax to be collected from your customers in service situations, see 86 Ill. Adm. Code 160.115.

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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

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