

In computing Retailers' Occupation Tax liability, no deductions shall be taken by a taxpayer from gross receipts on account of the cost of the property sold, or any other cost of doing business. See 86 Ill. Adm. Code 130.410. (This is a GIL.)

April 30, 2009

Dear Xxxxx:

This letter is in response to your letter dated November 18, 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. We also understand that you are currently under audit by the Department, which further limits the Department's ability to provide specific answers to your questions. The auditor is in the best position to advise you on the taxability of each of the charges identified in your letter.

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

COMPANY sells fasteners (screws, nuts, etc) industrial, construction and safety supplies. COMPANY is developing a new service, the PROGRAM, intended to improve lean management and convenience for our end customers. The PROGRAM initiative places COMPANY owned vending machines on the customer's worksite to allow them instant access to product typically picked up or shipped by our local branches. We are seeking Letter of Ruling to determine whether four service charges are considered taxable services by your state law.

The customer will enter into the PROGRAM by signing a contract (see attachment) for service for 3+ years. The customer signing the contract is the end user of all products purchased through the vending machine. A sample of likely customers include: manufacturing sites, ship and rail yards, maintenance areas and refineries. The customer will be billed and taxed accordingly for the product purchased on a weekly basis.

The service charges in question are not related to the sales of the product from the machine. The service charges are incurred by the customer in exchange for access to

the worksite vending option and do not represent any transfer of ownership of any tangible personal property. PROGRAM charges are billed separately on an initial invoice, followed by an annual invoice every 12 months from the installation date. The service charges are fixed as negotiated in the contract and will come due regardless of the volume of sales generated through the PROGRAM.

The service charges in question are:

1. Fee 1 - a one time fee assessed to the customer for PROGRAM vending machine to be delivered and connected to the customer worksite.
2. Fee 2 - an annual fee assessed to the customer in exchange for service via internet that allows the customer to review usage reports and for COMPANY employees to determine stocking needs of the customer.
3. Fee 3 - an annual fee assessed to the customer for the labor associated with COMPANY branch employees traveling to the customer site and stocking the vending machine.
4. Fee 4 (if applicable) - an annual fee assessed to the customer due to the increased overhead required to process the payment in an alternate option of ACH Credit, Net 15 invoicing or Credit Card as opposed to the ACH Debit option of payment, which incurs no Fee 4.

Please contact me if any additional clarification is needed regarding the PROGRAM. Attached for additional reference are a sample contract, a sample invoice and an informational brochure. Please issue a written determination regarding whether any of the four above described service charges are taxable.

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 at retail 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. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales.

If a retailer is required or authorized to collect the Use Tax, his records must show that he states such tax separately to the purchaser from the selling price of the tangible personal property that he is selling. In cases where it is not practicable to issue receipts showing the tax as a separate item, the seller is not required to separately state the tax. For example, retailers who make sales from vending machines are not required to separately state the tax. See 86 Ill. Adm. Code 150.1305. In these situations, the retailer must post a sign stating that the tax is included in the selling price of the item being sold. The posted sign method may not be used where the retailer issues sales tickets to customers. See 86 Ill. Adm. Code 150.1310

Where tangible personal property is sold to users or consumers by means of vending machines, the person owning the property contained in such vending machines makes final sales of

such property for use or consumption and becomes liable for Retailers' Occupation Tax. 86 Ill. Adm. Code 130.2135.

In computing Retailers' Occupation Tax liability, no deductions shall be made by a taxpayer from gross receipts or selling prices on account of the cost of property sold, the cost of materials used, labor or service costs, idle time charges, incoming freight or transportation costs, overhead costs, processing charges, clerk hire or salesmen's commissions, interest paid by the seller, or any other expenses whatsoever. Costs of doing business are an element of the retailer's gross receipts subject to tax even if separately stated on the bill to the customer. See 86 Ill. Adm. Code 130.410.

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