

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.)

September 28, 2009

Dear Xxxxx:

This letter is in response to your letter dated August 6, 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:

COMPANY specializes in providing clients print manufacturing services, graphic design services, and promotional products. Ninety percent of my business relates to the brokering of print manufacturing services on items such as brochures, booklets, posters, envelopes, etc. These special order printed materials are custom produced for my client's business/organization.

In my 12 plus years of working in the print industry, the manufacturers and brokers of print related media always charged clients 50% the normal sales tax amount. I believe this relates to Illinois Administrative Code Section 140.101 Service Occupation Tax & Section 130.2000 in which 50% of the total bill is taxed to account for the actual material cost.

I was informed by a representative of the Illinois Department of Revenue, to request a formal Private Letter Ruling on this situation from the Legal Services Office. I currently have a 9% tax rate printed on my supplied ST-1 forms. If the ruling is in my favor, I am requesting a line item of 4.5% for printed materials while retaining a 9% line item for standard general merchandise. As a small percentage of items I sell are in the promotional product category (pens, tee-shirts, tote bags, etc).

I thank you for your assistance in this matter. Please contact me with any questions.

DEPARTMENT'S RESPONSE:

The Department's regulation "Personalizing Tangible Personal Property" at 86 Ill. Adm. Code 130.1995 provides guidance regarding when Retailers' Occupation Tax is applicable and when Service Occupation Tax is applicable. Section 130.1995(b) provides that "[s]ellers of personalized business calling cards, greeting cards, letterheads, envelopes, labels, name plates, badges, medallions and the like do not incur Retailers' Occupation Tax liability on their receipts from such sales because they are primarily engaged in a service occupation in producing or procuring such items, which have no commercial value for their customers."

Under the Service Occupation Tax, servicemen are taxed on tangible personal property transferred as an incident of sales of service. See 86 Ill. Adm. Code 140.101, which sets forth the basis and rate of the Service Occupation Tax. Under the Service Use Tax Act, a tax is imposed on the privilege of using, in Illinois, tangible personal property that is received anywhere as an incident to a purchase of service from servicemen. See 86 Ill. Adm. Code 160.101, which describes the nature of the tax.

The liability of servicemen engaged in these transactions may result in either Service Occupation Tax liability or Use Tax liability for servicemen depending upon which tax base the servicemen choose to calculate their tax liability. Servicemen may calculate their tax base 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 the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately-stated selling price of the tangible personal property transferred. Under a second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, the servicemen must use 50% of the entire bill to service customers as the tax base. Both of the above stated methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for 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. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

De minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act may use the final method of determining tax liability. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. The servicemen are not authorized to collect "tax" from their service customers nor are the

servicemen liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction-by-transaction basis. Generally, servicemen not engaged in this State in the business of making sales of service incur no Service Occupation Tax liability. However, the servicemen's customers may incur a Service Use Tax liability on the tangible personal property that is received in Illinois as an incident to purchases of service.

Servicemen using the second method do not charge half the tax on the entire bill as you suggest, but charge the effective tax rate on 50% of the servicemen's entire bill. Servicemen registered and filing ST-1s do not receive different forms based on the method selected for paying taxes. Please see the instructions concerning sales of service for the Worksheet for Line 2 of Form ST-1.

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

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