

Governmental bodies incur Retailers Occupation Tax liability when selling tangible personal property to the public for use or consumption. The only exception is the sale of an item by a governmental body in the performance of its governmental function. See 86 Ill. Adm. Code 130.2055. (This is a GIL.)

May 27, 2011

Dear Xxxxx:

This letter is in response to your letter dated September 27, 2010, 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:

Our school district is in the process of preparing a RFP for pupil transportation services. As part of that bid we offer the contractor the ability to lease our current property. On that property is a diesel fuel storage tank that we currently use. In a group discussion today the question arose as to how we would use that fuel.

Our question is?

If we lease our current facility to a contractor and we supplied and paid for the fuel would it be legal to ;

- a. Invoice contractor monthly to recoup our costs; or
- b. Have contractor provide the fuel and build those costs into the bid.

The question arose during discussion because we know there is a difference in our per gallon cost vs a contractor's per gallon cost as local government entity the [sic] District pays a [sic] less taxes on fuel purchases.

Please, if possible, respond to this question via email.

DEPARTMENT'S RESPONSE:

Although we cannot advise you regarding how to structure your transportation contracts, we can set forth the relevant aspects of the sales tax structure in Illinois.

For example, 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. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. The retailer must pay Retailers' Occupation Tax to the Department based upon its gross receipts, or actual amount received, from the sale of the tangible personal property.

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 35 ILCS 105/3; 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 the retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

Organizations that are recognized as non-profit under Internal Revenue Code Section 501(c)(3), are not necessarily exempt organizations pursuant to Illinois tax law. Such organizations must obtain an exemption identification number (an "E number") to qualify. See 86 Ill. Adm. Code 130.2007.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an E number. The E number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that currently only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

While organizations that have received an E number are, as a general matter, subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are three limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity 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 an organization holding an E number 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 generally 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 E-number holders may "occasionally" conduct certain activities they may not be subject to tax whether or not such activities are open to the public. Note, however, 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,

Debra M. Boggess
Associate Counsel

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