

Proceeds from mandatory gratuity/service charges that are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed are not subject to tax. See 86 Ill. Adm. Code 130.2145(d). (This is a GIL.)

July 19, 2011

Dear Xxxxx:

This letter is in response to your letter dated May 22, 2011, 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](http://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 you to render a legal opinion on the administration of the State Sales tax. The issue in question is the administration of a state and local tax on a service charge from a local hotel. Our organization had a breakfast at this facility and upon examination of the invoice we found they had charged us sales tax on the Service Charge. This is not the first time they have done this and they told us it was ‘normal’ to do this. I questioned this as my understanding was that sales tax was charged for some type of durable goods and not a service or labor. I am enclosing a copy of the invoice for your review . I would appreciate your opinion on this that I may put this matter to rest.

**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. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then no Illinois Retailers’ Occupation Tax or Use Tax applies.

For general information regarding vendors of meals, we refer you to the Department’s Regulation “Vendors of Meals” at 86 Ill. Adm. Code 130.2145. In Illinois, caterers are considered to be retailers of tangible personal property. As a result, tax is imposed on their entire gross receipts

from sale, without any deduction on account of service costs or other overhead costs. A caterer's gross receipts would include all receipts associated with his sale of food. It is immaterial that service costs associated with the meal are billed separately on the invoice.

As a result, when a caterer contracts to provide food or beverages to a customer, his gross receipts will include room charges, corkage fees, cancellation fees, fees for special linens, chairs and tables, and chairs, dishes, glasses and flowers. Each of these charges is a part of his overall cost of doing business, and such costs are always includable in his gross receipts. See the Department's regulation "Cost of Doing Business Not Deductible" at 86 Ill. Adm. Code 130.410.

The proceeds of mandatory service charges separately stated on customers' bills for the purchase and consumption of food and beverages purchased at retail from a retailer are exempt from tax only to the extent that the proceeds of the service charge are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed. This procedure is required by 35 ILCS 120/2-5(15). Specifically, Section 130.2145(d) states as follows:

*"Mandatory gratuities are not included in the taxable receipts of persons operating restaurants, hotels and other places of business which come within the Act, if such mandatory gratuity is added to banquet or dinner checks in the form of a percentage of the total bill, or as a flat rate, to the extent that the proceeds of the service charge are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed. (Section 2-5(15) of the Act) If any part of the service charges are used to fund or pay wages, labor costs, employee benefits or employer costs of doing business, that part of the service charge is includable in gross receipts.*

Therefore if the employer separately states the mandatory gratuity charge, and if the entire gratuity is distributed to the servers or other employees who participated directly in serving, preparing, hosting, or cleaning up the food or beverage function with respect to which the mandatory gratuity is charged, the gratuity is not subject to Retailers' Occupation Tax. However, if the employer retains and uses the entire mandatory service charge for any other use, including paying employee wages, the mandatory gratuity/service charge is subject to tax.

When a vendor of meals (e.g., a hotel) adds a mandatory gratuity/service charge of a percentage of the total food charge and there is no evidence on the invoice that the mandatory gratuity/service charges were turned over to the employees as tips or in lieu of tips, then those mandatory gratuity/service charges would be taxable as part of the gross receipts from the sale of food and beverages.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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