

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.)

October 5, 2011

Dear Xxxxx:

This letter is in response to your letter dated September 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 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 work for High School District #. We have been filing sales tax ST-1 returns for many years. I began working for the district last year. As I was filing our August return, I began questioning why we are paying sales tax. As a prior auditor, I could not recall any other school district paying sales tax. Although, we have a more unusual school district since we sell our kids their books at the beginning of the semester and then they sell them back to us at the end of the semester.

After calling four separate times to the IDR, four different agents gave me the same answer. Since we are selling books and supplies to students, we do not have to collect sales tax on the items we sell.

But, after years of paying sales tax, I would like to have in writing from your department, a confirmation that we do not need to pay sales tax on books and supplies that we sell to students.

If correct, I will need to file amended returns in the next few months, so your expedience in verifying our exemption would be greatly appreciated.

Thanks [sic] you so much for your help.

DEPARTMENT'S RESPONSE:

When governmental units make sales that are not in the direct performance of their governmental function, the sales are generally taxable. See 86 Ill. Adm. Code 130.2055. Examples of taxable sales by governmental units include the operation of concession stands by park districts, sales of smoke detectors by fire protection districts, sales of leaf bags by municipalities, sales of books and supplies by school districts and sales of T-shirts, caps and mugs by State agencies. When making these types of sales, governmental units must not give their suppliers their exemption identification "E" numbers. They must, rather, register as retailers with the Department and remit Retailers' Occupation Tax on their sales. They may make tax-free purchases of the tangible personal property to be sold by providing Certificates of Resale to their suppliers. See, 86 Ill. Adm. Code 130.1405. The object is to ensure that governmental units do not have a competitive advantage when selling items that are also sold by Illinois retailers. The Illinois General Assembly did not intend to give government a competitive selling advantage over Illinois citizens.

The Department once promulgated a regulation that would have permitted school districts and private schools to sell books and educational supplies to students tax-free. However, retailers of books and school supplies who were adversely affected by that regulation filed a lawsuit and the regulation was voided by the Illinois Supreme Court. See, *Follett's Illinois Book and Supply Store, Inc. v. Isaacs, Director of Revenue*, 27 Ill. 2d 600, 19 NE 2d 324 (1963).

For these reasons, we conclude that a school district incurs a Retailers' Occupation Tax liability when it makes retail sales of books and supplies to students because such sales are in competition with other retailers.

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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