

This letter discusses the sales tax liabilities of university dining facilities that are open to the public. See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

December 28, 2011

Dear Xxxxx:

This letter is in response to your letter dated June 21, 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:

This is a request for a General Information Letter pursuant to the provisions of 2 Ill. Admin. Code 1200. The University is requesting information from the Illinois Department of Revenue regarding whether the Illinois Retailers' Occupation Tax applies to gross receipts of meals to students, faculty, and staff.

The University is among the preeminent public universities of the nation and is a world leader in research, teaching, and public engagement, distinguished by the breadth of its programs, broad academic excellence, and internationally renowned faculty.

The University is currently undertaking major renovations to University residence halls, and this project will be ongoing over the next decade. The first phase is now complete which includes a new state of the art dining facility that offers more dining choices. The renovations include upgrades to both the food service and seating areas. Several stations positioned throughout the main dining area offers [sic] more choices of entrees/salads/desserts. In addition, other dining options and convenience type stores are located throughout the residence complex for the purchase of ala-carte [sic] type items, both food and non-food. The facility is available to students, faculty, staff, guests of students, and guests of the University. It is operated as a cashless system.

Meals plans are available for purchase for University students only as a declining balance system encoded on their University ID card. They are available to both

students with University housing contracts and students without University housing contracts (i.e., live in private housing and/or apartments.)

Students, faculty, and staff may buy 'extra credits' for flexibility of purchases from certain University locations. 'Extra credits' are not considered part of a meal plan. These 'extra credits' may be used to purchase meals at any of the dining facilities, food/beverage or personal items at convenience stores, ala-carte [sic] food, other non-food/beverage items, and limited services (such as, laundry and printing/copies).

All facilities also accept credit cards.

## **LAW REFERENCES**

- 1) Illinois Retailers' Occupation Tax 35 ILCS 120/2 and Regulation 86 Part III Admin. Code Section 130.120
- 2) Illinois Regulation Title 86 Part 130 Section 130.2005(b)(4)
- 3) Private Letter Ruling ST 95-0195 issued May 12, 1995
- 4) Private Letter Ruling ST 01-0004 issued February 14, 2001
- 5) Private Letter Ruling ST 02-0023 issued August 13, 2002

## **INFORMATION REQUESTED**

The University is interested in acquiring answers to the following questions for compliance purposes.

### **MEAL PLANS:**

- 1) Would all meal plan purchases be taxable for students with University Housing contracts exempt from sales tax?
- 2) Would all meal plan purchases be taxable for students without University Housing contracts?

### **EXTRA CREDITS:**

- 1) Would all food purchases by 'Extra Credits' be taxable for students with University Housing contracts?
- 2) Would all food purchases by 'Extra Credits' be taxable for students without University Housing contracts?
- 3) Would all food purchases by 'Extra Credits' be taxable for faculty and staff?
- 4) Would all food purchases by 'Extra Credits' be taxable for student guests or University guests?

### **CREDIT CARDS:**

- (1) Would all food purchases by credit card be taxable for students with University contracts?
- (2) Would all food purchases by credit card be taxable for students without University contracts?

- (3) Would all food purchases by credit card be taxable for faculty and staff?
- (4) Would all food purchases by credit card be taxable for student guests or University guests?
- (5) Would all food purchases by credit card be taxable for conference and camp attendees?

Please contact me if you have any questions or require additional information.

Thank you for your assistance in this matter.

#### **DEPARTMENT'S RESPONSE:**

A review of the Department's position regarding sales of food in campus cafeterias and dining facilities may be helpful. As stated in the Department's regulation at 130.2005(b)(4)(A):

*A school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. In any instance in which the dining facility is opened up for the use of other persons, all sales that are made at such facility while that condition continues to prevail are taxable.*

In a college campus setting, this has meant that sales of meals by the university to students and employees in a closed dormitory cafeteria were exempt, but all food sales in a student union-type-setting open to the public, including sales to students and employees, were taxable. The restricted cafeteria exemption has been available to schools for many years and is supported by 86 Ill. Adm. Code 130.2005(b)(4)(A). The school would incur Retailers' Occupation Tax liability if it should engage in selling any of the same items to the public.

The regulatory provisions and the closed cafeteria concept have served two purposes. The first purpose served by the closed cafeteria concept is to solve the practical impossibility that the Department would face when auditing an open facility in verifying that all of the sales claimed to be exempt were, in fact, made to students and employees of the school. The second purpose served by the closed cafeteria concept is the protection of retailers in competition with the school's open facility. That is, student union type (open to the public) selling competes with area food service establishments for student purchases as well as for purchases by the public.

As an accommodation to schools that sell meal plans but have no separate dormitory food facility, the Department has allowed universities to make tax-free sales of meals to students in a central food facility open to the public. Such sales by a university may be made tax free in a campus cafeteria that is open to the public only if there is a mechanism for identifying and documenting, at or before the time of sale, the nontaxable sales of food to students living in university housing and enrolled in a meal plan. The mechanism for identifying and documenting such sales to such students, however, must consist of something more than simply showing an identification card. These mechanisms must consist of systems that provide both an auditable and verifiable record of food sales to each of those students.

Please note that in order to avoid problems of competition, the Department has limited tax-free sales of food by the school in facilities open to the public to students who live in university housing

and have purchased a meal plan. These sales can only be made tax-free if the school has a program in place that allows appropriate students to be identified in an auditable and verifiable record system. No sales paid for with “credits” may be made tax exempt unless the “credits” can identify students living in university housing that have purchased a meal plan. No cash sales may be made tax exempt. Meals sold to employees of the school and others are subject to tax in facilities open to the public.

Over time, the Department has become aware that on campus food services have expanded to include various additional kinds of vending arrangements. The Department recognizes that the selling of meals by a university in a food facility open to the public may not be done tax-free except to students who live in university housing and have bought a meal plan. For this, there must be an auditable and verifiable record system in place for tracking these sales.

In 2001, the Illinois Fourth District Appellate Court decided in the case of *Subway Restaurants v. Topinka*, 322 Ill.App.3d 376, 751 N.E.2d 203 (2001), that a restaurant selling food on campus was not an agent of the university for purposes of tax exemption. The restaurant also was not a wholesale provider of products to the university for purposes of tax, and the university was not a purchaser of the restaurant’s products for purposes of an exemption from tax. Therefore, even though the restaurant operated in a space that it leased from the university, none of the sales made by the restaurant qualified as exempt from sales tax.

It is the Department’s position, as articulated in the regulation (86 Ill. Adm Code 130.2005(b)(4)(A)), that it must be the school itself that makes such sales. This policy was affirmed by the *Subway* case discussed above.

Please note that all sales of non-food items on campus, including sales made by the school, are subject to tax regardless of who purchases them. This is ongoing competitive selling.

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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Associate Counsel

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