

Membership fees are generally considered intangibles and are not subject to Retailers' Occupation Tax or Use Tax. If a membership charge entitles the customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to the service, the charge may result in Retailers' Occupation Tax liability, Service Occupation Tax liability, or Use Tax liability. See 86 Ill. Adm. Code 130.401(d) and 86 Ill. Adm. Code 140.101. (This is a GIL.)

April 3, 2014

Dear Xxxx:

This letter is in response to your letter dated December 10, 2013, 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:

On behalf of our client, we are requesting a written advisory opinion pertaining to the taxability of a membership fee collected by our client from individuals in your state. Our client is requesting this opinion from you in order to better comply with your jurisdiction's tax collection and reporting requirements. We are providing the following facts regarding our client: their membership fees, as well as the benefits provided to their customers in exchange for the membership fees.

Company Description

Our client is an association for instructors and trainers of a recreational sport and entertainment industry. The association exists to promote the sport and the association's brand name, to bring awareness to environmental causes, and to sell association and sporting merchandise related to the sport.

Membership Fees

Our client offers their customers a membership to the recreational sport association for an annual membership fee.

- a) Annual membership fee costs \$50 - \$250, depending on the level of involvement with the association, i.e. instructor, retail store, or resort.

- b) The membership fee covers the remainder of the current year and the entire following calendar year.
- c) The membership is subject to annual renewal.

Membership Fee Benefits

In exchange for payment of this fee, the customer is entitled to receive the following benefits:

- An instructor's guide book;
- Rights to display association marketing material;
- Access to purchase associated sport merchandise from our client for resale;
- Ability to become certified in this recreational sport;
- One-year subscription to a sport industry magazine {published by our client};
- Marketing materials for use as instructors, retail stores, or at a resort.

Questions:

- 1) Is the membership fee subject to sales or use tax in your jurisdiction?
- 2) If the membership fee is taxable, what is the basis for tax? The entire charge or a portion thereof?
- 3) If the membership is taxable, and the member cancels before the end of the membership period, and a prorated refund is issued by our client to their customer, is the refunded amount subject to a refund of sales or use tax? If so, what is the basis for the refund?

Please provide any statutory or regulatory guidance related to your ruling where applicable. We understand that by not providing our client's identity with this request that the opinion you provide may be non-binding.

Thank you in advance for your timely response to this request.

DEPARTMENT'S RESPONSE:

The Department cannot provide a specific answer to your request based on the limited facts presented regarding the memberships and fees.

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. 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. 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then neither Illinois Retailers' Occupation Tax

nor Use Tax would apply. Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to customers incident to the services being provided, then neither Illinois Service Occupation Tax nor Service Use Tax would apply.

Generally, the Department does not consider receipts from the sale of membership fees to be gross receipts from the sale of tangible personal property. Rather, a membership fee is considered an intangible, which is not subject to Retailers' Occupation Tax or Use Tax liability. 86 Ill. Adm. Code 130.401(d). This is the case when the sale of membership rights does not include the transfer of tangible personal property. However, if the membership charge entitles the customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to that service, then that charge may result in either Retailers' Occupation Tax liability, Service Occupation Tax liability or Use Tax liability, depending upon the serviceman's activities. See 86 Ill. Adm. Code 140.101.

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,

Cara Bishop
Associate Counsel

CB:ikm