

This letter discusses the tax consequence of reward credits. See 86 Ill. Adm. Code 130.401(c).
(This is a GIL.)

December 15, 2010

Dear Xxxxx:

This letter is in response to your letter dated December 1, 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:

Background

We are a direct sales company that markets items exclusively through independent distributors. Distributors recruit hostesses to hold home parties. A hostess holds a sales party for her friends and relatives in her home where the company's products are demonstrated and sold. The hostess earns 'hostess dollars' depending on sales made at the party. These dollars become worthless if the hostess does not use them on the order form she submits for that sales demonstration. The hostess is not permitted to assign the 'hostess dollars' discount to another person, nor may she use it to pay applicable sales taxes or shipping charges due on her purchase of products.

Hostess orders may include one or more customers, and contain promotional items for the hostess known as hostess benefits (hostess dollars and hostess free gifts). Distributors submit to the corporation the sales tax for remittance to the state. These orders may be shipped to customers, distributors, or hostesses.

Issue

- The hostess dollars are a credit based on sales of the party that must be used when the party order is placed. If not used by the hostess, the hostess dollars are lost. Should our client collect sales tax on the gross amount (entire sales

price of items purchased including hostess dollars) or the net amount (entire sales price of items purchased less the hostess dollars) thereby treating the hostess dollars as a trade discount?

If you have any additional questions concerning this issue, please call me.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, imposes a tax upon persons engaged in the business of selling tangible personal property at retail. The State tax rate is 6.25% of gross receipts for most items, and a lower rate of 1% for qualifying food, drugs and medical appliances. Local occupation taxes may also be applicable.

Gross receipts subject to Retailers' Occupation Tax are defined as all the consideration actually received by the seller. If a seller provides a discount to a purchaser and does not receive a reimbursement or rebate for that discount, only the (discounted) amount received by the seller is taxable. If a seller receives a reimbursement or rebate for a discount, the amount of that reimbursement or rebate is considered part of the taxable gross receipts received by the seller. See 86 Ill. Adm. Code 130.2125.

The Department's regulations provide that credits awarded to a host or hostess for sponsoring a party for friends at which a seller may show and solicit orders for her merchandise, and which are awarded based upon the amount of sales generated at the party, are included in gross receipts subject to tax when applied toward purchases of the seller's merchandise. The value of the reward credit equals the dollar amount credited when the reward credit is applied. See 86 Ill. Adm. Code 130.401(c).

You note in your letter that Distributors submit to the COMPANY the sales tax they receive from the independent distributors and remits the sales tax collected to the State. Information concerning the "Filing of Returns for Retailers by Suppliers Under Certain Circumstances" may be found at 86 Ill. Adm. Code 130.550. This regulation explains that manufacturers, importers or wholesalers can enter into an "agency agreement" with the Department, whereby they register, file returns and remit Retailers' Occupation Tax on behalf of their local distributors. Please note that such arrangement must be accepted by the Department and is subject to any written objections of the retailers that would be affected.

The Agency Agreement (RR-80) may be used to obtain approval of such an arrangement with the Department. Under this type of agreement, the manufacturers, importers or wholesalers sell products to local distributors and collect tax from the distributors based upon the selling price to the ultimate consumers. The applicable tax is not based upon the sale to the local distributors. The appropriate tax must be collected for the sale to the distributors' ultimate customers, which includes State and any applicable local tax. In general, the determination of any local tax liability will depend on the location where the purchase order is accepted from the ultimate customer. See 86 Ill. Adm. Code 270.115.

When manufacturers, importers or wholesalers operate under this type of agency agreement, the local distributors need not register, file returns or remit taxes since the manufacturers, importers or wholesalers have agreed to this responsibility. The local distributors should, however, retain a copy of the agreement. If they fail to provide such documentation upon demand by the Department, they will be required to register, file returns, and remit the appropriate amount of tax directly to the

Department. Distributors who prefer to register and remit their own taxes may opt out of the agency agreement.

Taxpayers may acquire form RR-80 (Agency Agreement) by contacting the Department's Central Registration Unit, attention Manager, located at Illinois Department of Revenue, 101 West Jefferson, Springfield, Illinois 62702.

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,

Richard S. Wolters
Associate Counsel

RSW:msk