

“Gross receipts” means all the consideration actually received by the seller, except traded-in tangible personal property personal property. See 86 Ill. Adm. Code 130.401. (This is a GIL.)

November 29, 2004

Dear Xxxxx:

This letter is in response to your letter dated November 17, 2003, 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.ILTAX.com](http://www.ILTAX.com) 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 hereby request an administrative ruling with regard to the proper sales and use tax treatment related to the sale of cigarettes that are subject to a tobacco manufacturer's buy-down promotional. The relevant facts regarding the transaction are outlined below.

#### FACTS

Our client is a retailer who operates convenience stores in your state. Our client contracts with tobacco manufacturers to participate in cigarette buy-down programs.

A buy-down program is a common incentive program offered by tobacco manufacturers to increase sales of certain cigarettes at retail stores. The buy-down agreements, which are entered into between a manufacturer and retailer, require the retailer to reduce the selling price of certain brands of cigarettes for a defined period of time. It should be noted that the consumer remits the promotional discount price for the cigarettes subject to the buy-down promotion; there is no exchange of a coupon or other item of value. The buy-down is a transaction between the manufacturer and the retailer, to which the consumer is not a party.

To receive the buy-down incentive, the retailer must submit a report to the manufacturer at the end of the buy-down period that provides the number of cartons sold during the buy-down period. Upon receipt of this report, the manufacturer will reimburse the retailer the difference between the regular retail price and the net buy-down selling price. Unlike inventory buy-downs utilized in the past, these promotions enable the retailers to be reimbursed based on sales of specific brands of cigarettes subject to the buy-down promotion.

In addition to requiring sales price reductions, the retailer must agree to further promote the applicable product(s) through the use of special displays and other promotional signage that advertise the promotional product(s) and reduced selling price. In certain circumstances the retailer is required to notify the customer of the manufacturer's buy-down through advertising or by printing the buy-down on the customer's receipt. Under these agreements the manufacturer often specifies the placement of these displays as well as the placement of the product itself. Accordingly, buy-downs are often referred to as 'promotional allowances.'

For financial accounting purposes, the buy-down discount is generally recognized as a reduction of the retailer's cost of goods sold.

Our client is in the process of evaluating the appropriate tax collections/remittances in the states in which it operates. To assist in your evaluation, the following example is provided:

- Gross retail price of pack of cigarettes is \$3.50;
- Manufacturer's buy-down per pack is \$.75;
- Net selling price of the pack of cigarettes is \$2.75;
- Customer remits \$2.75 for the purchase of the pack of cigarettes during the buy-down period; and
- Customer receipt provides either:
  - o Breakdown of \$3.50 gross retail price, less the \$.75 buy-down discount with net selling price of \$2.75 [our client's method]; or
  - o Net selling price of \$2.75 only.

## RULING REQUEST

Utilizing the facts and example provided above, we respectfully request taxability rulings on the following four issues. In addition, we respectfully request the statutory, regulatory or tax policy ruling upon which your responses are based.

1. Is the client responsible for reporting taxable sales/gross proceeds using the gross retail price or the net selling price when reporting and remitting sales/use tax to your state on sales of cigarettes subject to the buy-down promotion?
2. Is the client responsible for collecting and remitting sales/use tax from its customers on the gross retail price or the net selling price for sales of cigarettes subject to the buy-down promotion?
3. If you determine that the buy-down promotional discount is included in the taxable sales base, would your response differ if the customer were provided a

receipt for the net selling price rather than the buy-down promotional breakdown (as described above)? In this case, the customer would be unaware of the manufacturer's buy-down program.

4. Would the accounting treatment on the client's books and records have any impact on the determination of the sales/use tax treatment?

We appreciate your guidance in the determination of the appropriate tax computations in Illinois. Please contact me if you have any questions or if you require additional information.

#### **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. The tax is based on the amount of gross receipts received by the retailer on the sale of that property. "Gross receipts" means all the consideration actually received by the seller, except traded-in tangible personal property. See 86 Ill. Adm. Code 130.401.

If a retailer sells a product at below retail price and is reimbursed by the manufacturer for the difference between the price charged and the retail price, that reimbursement is included in the gross receipts for the sale of that product. This is similar to the treatment of discount coupons. See 86 Ill. Adm. Code 130.2125. In this instance, gross receipts should be reported by the retailer based on all gross receipts received regardless of source. The retailer collects the Use Tax from the customer in a corresponding amount. This is the case regardless of how the transaction is reported to the customer, since gross receipts on the product include gross receipts from the customer as well as the reimbursement made by the manufacturer. Notwithstanding the accounting treatment for this transaction, if a retailer receives a payment as reimbursement of a discount provided to the customer for a specific product, that reimbursement is included in gross receipts.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).]

Sincerely,

Samuel J. Moore  
Associate Counsel

SJM:msk