

If a retailer accepts a return of merchandise and provides the customer with a full or partial refund, the retailer should refund all of the tax to the customer from the original sale. See 86 Ill. Adm. Code 130.401(b). (This is a PLR.)

March 8, 2010

Dear Xxxxx:

This letter is in response to your letter dated September 22, 2009, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

FIRM submits this Request for a Letter Ruling pursuant to Ill. Admin Code tit. 2, § 1200.110(a) on behalf of its client, the COMPANY, regarding the manner in which sales tax shall be refunded to COMPANY and its customers when a customer receives less than the original purchase price in exchange for returned merchandise.¹

I. Taxpayer Information

The taxpayer's information is as follows:

COMPANY
ADDRESS

II. Facts

COMPANY is a specialty retailer of luxury, designer and fashion merchandise. COMPANY sells its merchandise through brick-and-mortar stores located in Illinois ('State') as well as numerous other states, and through COMPANY catalogs and

websites. When COMPANY makes a retail sale of merchandise, COMPANY collects sales tax based upon the original purchase price from the customer and remits such amounts to the State.

In March 2009, COMPANY instituted a new return policy ('New Policy') for merchandise purchased from its catalogs and websites. Under the New Policy, customers making returns to COMPANY more than 60 days after their receipt of merchandise will be entitled to a partial refund of their original purchase price, as follows:

Return Within	Amount of Credit
0 – 60 days from receipt of merchandise	100% of original purchase price
61-120 days from receipt of merchandise	75% of original purchase price
121-180 days from receipt of merchandise	50% of original purchase price
181+ days from receipt of merchandise	0%

The percentage reduction reflects the fact that the value of the merchandise decreases with the passage of time. This reduction in value stems from the fact that product models go out of date, fashions and styles change with seasons, and previously returned merchandise generally is less valuable than merchandise that has not been previously sold. COMPANY contacted its customers via letters and emails before implementing the New Policy, which is now available on its website. It is anticipated that the New Policy will encourage customers to return merchandise more promptly and discourage late returns.

III. Issue

When a customer returns merchandise pursuant to the New Policy and receives less than the original purchase price, is the customer, and thus, COMPANY, entitled to: (a) a full refund of sales tax based upon the original purchase price, (b) a partial refund of sales tax based upon the percentage of the original purchase price actually refunded to the customer, or (c) no refund of sales tax?

IV. Law

Illinois imposes a sales tax upon persons engaged in the business of selling tangible personal property for use or consumption. Ill. Admin Code tit. 86, §130.101. The tax liability is determined by applying the effective tax rate to the gross receipts from such sales. 86 Ill. Adm. Code 130.101(a)(1). 'Gross receipts' is defined as all the consideration actually received by the seller, except traded-in tangible personal property. Ill. Admin Code tit. 86, § 401.

Ill. Admin Code tit. 86 § 130.401(b) provides in pertinent part:

Any seller may deduct from his gross receipts any refunds made by him during the preceding return period to purchasers, on account of tangible personal property returned to the seller, in case the seller had theretofore included the receipts from the sale of such tangible personal property in a return made by him, and had paid the tax...with respect to such receipts.

Ill. Admin Code tit. 86 § 130.401(b) continues:

When the seller makes a charge for restocking or reshelving merchandise, the receipts retained by the seller to cover the restocking or reshelving fee are not considered taxable gross receipts. When customers return merchandise, sellers should refund all of the sales tax to the customer, even though they will not be refunding all of the purchase price because of the restocking or reshelving policy.

The Illinois Department of Revenue ('Department') has said in many private letter rulings and general information letters that receipts retained by the retailer to cover the restocking fee are not considered taxable gross receipts. See ST 98-0095-GIL, ST 98-0061-GIL, ST 93-608-PLR, ST 93-0104-PLR, ST 90-0022-PLR, ST 89-0721-PLR, ST 89-0417-PLR. The Department added that when customers return merchandise, sellers should refund all of the sales tax to the customer, even though they will not be refunding all of the purchase price because of their restocking or reshelving fees. *Id.* The Department explained in one private letter ruling that when property is returned, the transfer of tangible personal property is eliminated, and thus, any taxable transaction is eliminated. ST 90-022-PLR.

V. Proposed Letter Ruling

Illinois law provides that a retailer may reduce gross receipts when property is returned to the seller. The percentage reduction specified in the New Policy should be viewed as a restocking or reshelving fee charged in connection with a return, rather than a repurchase for a lesser amount because COMPANY returns the merchandise to inventory to be resold as 'new' and because the percentage reduction is charged to reflect the decrease in value associated with the delayed return. Illinois law also provides that the full refund of the tax paid should be refunded to the customer. Accordingly, COMPANY and the customer are entitled to a full refund or credit of the tax paid based upon the original purchase price.

VI. Conclusion

COMPANY seeks confirmation regarding the manner in which sales tax shall be refunded to COMPANY and its customer when the customer receives less than the original purchase price in exchange for returned merchandise. Please feel free to contact INDIVIDUAL if you have any questions.

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. See 86 Ill. Adm. Code 130.101. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. The retailer must pay Retailers' Occupation Tax to the Department based upon its gross receipts, or actual amount received, from the sale of the tangible personal property. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales.

Where a taxpayer under the Retailers' Occupation Tax Act pays to the Department an amount of tax or penalty or interest not due under the provisions of the Act, either as the result of a mistake of fact or an error of law, such taxpayer may file a claim for credit with the Department. See 86 Ill. Adm. Code 130.1501. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a refund or credit. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. In other words, the retailer must give his or her customer back the tax he or she has collected from him or her or the retailer is not entitled to the credit or refund. Claims for credit shall state the requirements that are contained in subpart (b) of the regulation. The repayment of the tax to the customer will satisfy the requirement of Section 130.1501(a)(2).

When a retailer makes a charge for restocking or reshelving returned merchandise, the receipts retained by the retailer to cover the restocking or reshelving fee are not considered taxable gross receipts for purposes of the Retailers' Occupation Tax liability. When a customer returns merchandise to the retailer, the retailer should refund all of the sales tax to the customer even though he will not be refunding the entire purchase price because of his restocking or reshelving policy. 86 Ill. Adm. Code 130.401(b).

Likewise, under the COMPANY's "New Policy", it should return all of the tax to the customer when the customer returns the merchandise. This would apply in cases where a full refund is provided or only a partial refund is provided. If the COMPANY can document that it returned all of the tax to the customer that was paid on the initial purchase, it may deduct all the gross receipts from the original sale on its return for the period in which the refund was provided. See for example 86 Ill. Adm. Code 130.401(b). If it fails to return all of the tax to the customer that was paid on the initial purchase, it may only deduct the amount of gross receipts that correspond to the amount of tax that was refunded. The remainder of the tax that was not returned to the customer represents an over collection of tax. Illinois law requires that all over collections of tax must either be turned over to the Department or refunded to the customer. See 35 ILCS 120/2-40.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

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ⁱ To the best of both the taxpayer's and the taxpayer's representative's knowledge, the Illinois Department of Revenue ('Department') has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, and the taxpayer or any representatives did not previously submit the same or similar issue to the Department but withdrew it before a letter ruling was issued.