

Illinois Retailers' Occupation Tax is imposed upon gross receipts from the sale of tangible personal property to end-users and no deductions shall be taken by a taxpayer from gross receipts on account of the cost of the property sold, the cost of materials used, labor costs, or any other expense whatsoever. See 86 Ill. Adm. Code 130.410. (This is a GIL.)

March 2, 2010

Dear XXXX:

This letter is in response to your letter dated July 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.

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:

Please accept this letter as an informal request for general written advice. We are requesting a ruling as to the application of Illinois Retailer's [sic] Occupation Tax on a convenience fee charge for online ticket sales.

PROPOSED FACTS

Our Client, Company T provides a live entertainment show ('Show') and serves food and beverages ('Food') to its customers. Company T sells tickets to gain access to the Show. The price of the ticket also includes Food. Company T lists the price of the Show and Food on the ticket separately. Tickets can be purchased either at Company T's location or on Company T's website. Company T charges a convenience fee for online ticket sales at Company T's website. The fee is charged by Company T and not a third party credit card company. The fee is related to both the show portion and meal portion of the ticket. The fee is also a separately stated charge on the ticket. The fee is intended to help Company T recover the service costs associated with providing online ticket sales to customers. Company T currently collects and remits sales tax on sales of tickets to the Illinois Department of Revenue.

REQUEST FOR RULING

Based on the proposed facts, we respectfully request a response to the following question:

- What is the taxability of the convenience fee charge for online ticket sales?

* * *

We understand that an anonymous ruling may not be binding on the State until all the parties are disclosed. However, we look to you for guidance on this important issue. Since time is of the essence, we would greatly appreciate your response as soon as possible. To expedite receipt of your response, please fax a copy to me. If you have any questions or require additional information, please feel free to contact me.

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 at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. 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 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Illinois Retailers' Occupation Tax (sales tax) is imposed upon gross receipts from the sale of tangible personal property to end-users and gross receipts is defined to mean all the consideration received by sellers valued in money whether received in money or otherwise, but not including the value of or credits given for like kind traded-in property.

In computing Retailers' Occupation Tax liability, no deductions shall be made by a taxpayer from gross receipts or selling prices on account of the cost of property sold, the cost of materials used, labor or service costs, idle time charges, incoming freight or transportation costs, overhead costs, processing charges, clerk hire or salesmen's commissions, interest paid by the seller, or any other expenses whatsoever. Costs of doing business are an element of the retailer's gross receipts subject to tax even if separately stated on the bill to the customer. See 86 Ill. Adm. Code 130.410.

Generally, fees, charges and surcharges, for example, convenience fees are costs of doing business subject to the tax. It appears that if someone purchases a ticket to the Show online, the purchaser cannot escape the convenience fee which, in essence, becomes part of the selling price of the ticket. The online purchaser does not have the option of whether or not to pay this convenience fee charge. As such, an inseparable link exists between the purchase online of a ticket to the Show and the convenience fee charge, a link that does not exist but for the purchase online. See Nancy Kean v. Wal-Mart Stores, Inc., 235 Ill. 2d 351, 919 N.E.2d 926 (2009) (The cost of shipping was part of the selling price for the goods purchased at Wal-Mart's internet store and, thus, subject to sales tax.)

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,

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