

The Service Occupation Tax is a tax imposed upon servicemen engaged in the business of making sales of service in this State, based on the tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

March 30, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 24, 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:

On behalf of our client, COMPANY, we respectfully request the Illinois Department of Revenue to issue a Private Letter Ruling pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

General Information

1. Enclosed please find an original Form IL-2848, Power of Attorney, authorizing FIRM to represent the Company before the Illinois Department of Revenue (the 'Department').
2. This Private Letter Ruling ('PLR') is not requested with regard to a hypothetical or alternative proposed transactions [sic]. This PLR is requested to determine the Retailers' Occupation Tax ('ROT'), Use Tax ('UT'), Service Occupation Tax ('SOT') and Service Use Tax ('SUT') consequences of the actual business practices of the Company.
3. The Company is not currently engaged in litigation with the Department in regard to this or any other tax matter.

4. The Company is not currently under audit by the Department in regard to this or any other tax matter.
5. To the best knowledge of the Company's personnel, the Department has not previously ruled regarding this matter for the Company, nor has the Company submitted a request for a ruling on the same or similar issues to the Department.
6. The Company requests that its name and address be deleted from the PLR prior to publication or dissemination to others.
7. The Company knows of no authority contrary to the authorities referred to and cited herein.

Statement of Material Fact

The Company operates children's hair salons in Illinois. The salons offer various services, parties, and sales of merchandise at retail. The Company is currently registered to collect and remit sales tax in Illinois. Revenue is derived from the following activities:

1. Haircuts – The salon offers standard haircuts to young boys and girls.
2. Spa Packages – These can include a shampoo, haircut, style, party up-do, manicure, pedicure, nail polish, nail art, and a ring.
3. Parties – The Company offers various themed parties. Typically, the girls will have their hair styled, nails polished, and some make-up applied. The girls will dress up in costumes and engage in various activities depending on the theme of the party. They also receive various items related to the theme. For example, girls at the Princess Party will receive a tiara, princess certificate, and a picture. The cost of the items given away does not exceed 35% of the amount charged for the party. Food is not provided but parents are allowed to bring cake to the parties. The store will typically supply plates and forks at no charge. The price per party is based on a flat fee inclusive of all give aways and provides for a limited number of guests. Additional guests can be added for a fee per child.
4. Party Additions – Various items can be added to the party package. Add-ons can include a shirt, tiaras, sunglasses, DVDs, frames, flip-flops, lotion, candy, and/or limo service. Party additions are separately stated on the sales receipt.
5. Invitations – Various invitations related to the theme of the party are offered. The invitations are printed out in the store with the information of the birthday girl and party date.
6. Retail Sales – The Company sells hair products and miscellaneous merchandise at retail.

For all services where tangible personal property is transferred, the cost of the property is less than 35% of the amount charged for the service. This includes items which are included in the parties. Sample receipts have been attached for your reference.

Request for Ruling

Based on the material facts, we respectfully request a response to the following questions:

1. What are the sales tax consequences of the flat rate charged for the parties and spa packages where tangible personal property is transferred along with the service?
2. Would the above listed 'Party Additions' affect the tax treatment of the parties?
3. What are the tax consequences of invitation printing services?

Relevant Authorities and Discussion

1. Based upon the following authority, it is our understanding that the parties and spa packages would be considered a service and the Company incurs and must remit SOT on the cost price of tangible personal property transferred incident to the sale of the service. The tax liability would be reported on Form ST-1 by including the total receipts for the party on Line 1. All amounts excluding the cost price of tangible personal property would be deducted on Line 2. The taxable receipts would appear on Line 3 along with taxable receipts from sales at retail.

Our understanding is based on 86 Ill. Admin Code §140.109. The regulation provides that a de minimus serviceman that is registered as a retailer under the ROT will incur Service Occupation Tax on the cost price of tangible personal property transferred incident to sales of service. The Company meets the definition of a de minimus serviceman because the cost price of tangible personal property transferred with the parties is below 35%. As noted above, the Company is already registered as a retailer with the Department. The regulation further provides that de minimus servicemen include 'hair stylists transferring hair products incident to service and also making over-the-counter sales of shampoo and other hair care products.' 86 Ill. Adm. Code §140.109(a).

2. It is our understanding that because the party additions are separately itemized on the invoice, additions that constitute tangible personal property would be subject to ROT and would not affect the sales tax treatment of the other invoice items.
3. With regard to the invitations, Reg. 130.1995(b)(1) identifies items such as personalized business cards, greeting cards, letterhead, and the like as not subject to ROT because the items have no commercial value for the customers. The Company believes the personalized invitations would be treated similarly because there is no commercial value to the invitations and they become worthless after the party is over. Additionally, the Company believes the guidance offered in Private Letter Ruling ST 99-0035-PLR, which deals with customized checks, would be applicable to the Company's situation.

It is our understanding that the printing of the invitations is considered a service and, as such, subject to SOT in Illinois. All materials purchased in relation to the invitations should be purchased with a resale certificate and then taxed under the SOT.

We respectfully request that the Department issue a ruling on the aforementioned questions. If the Department cannot conclude the proper tax treatment for the above services, I request that the Department contact me to determine what additional information is required. Feel free to call me with any additional questions.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Further, the Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject to the request, the Department will decline to issue a letter ruling on the subject." 86 Ill. Adm. Code 1200.110(a)(3)(D). The Department declines to issue a Private Letter Ruling since its regulations are dispositive of the subject of your request. Although we are not providing you with a Private Letter Ruling, it appears that your analysis of Illinois sales tax laws regarding Service Occupation Tax and Retailers' Occupation Tax transactions does conform with the procedures set forth below.

Please see 86 Ill. Adm. Code 130.2000, which is the regulation for "Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers." As a general rule, when products are items of general utility and serve substantially the same function as stock or standard items, the products will be subject to the Retailers' Occupation Tax when sold. Items which serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price. Items that would not be considered stock or standard items and would not be sold to someone other than the purchaser for substantially the same price would not be subject to the Retailers' Occupation Tax when sold, but would generally be subject to Service Occupation Tax liability or Use Tax liability as described below.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The serviceman's liability may be calculated in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Normally, most printers handle their liabilities under one of the de minimis methods.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to

the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

I hope this information is helpful. However, 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,

Debra M. Boggess
Associate Counsel

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