

This letter concerns returns of merchandise. See 86 Ill. Adm. Code 130.401(b). (This is a GIL.)

April 1, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 23, 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](http://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:

This letter is a request for a sales tax ruling on returned merchandise.

I work as a tax advisor in the field of state and local taxes for a number of direct selling companies (AKA multi level and network marketing).

In support of the request, I state the following:

**I. Background**

These companies have entered into an agreement or arrangement with your state to administer sales taxes on behalf of their independent sellers.

Under this agreement or arrangement, the company precollects the applicable sales tax based on the suggested retail price (or actual sales price if known) of taxable products including shipping charges if taxable and the ship-to-address.

All of these companies have a buy back policy.

Under the terms of their policy, the company will:

- Refund the full purchase price if their independent seller or customer of the independent seller is not satisfied with the product including shipping charges or
- Refund the full purchase price if their independent seller or customer of the independent seller is not satisfied with the product excluding shipping charges.
- Refund 90% of the purchase price of marketable products if returned within one year from date of purchase including shipping charges or
- Refund 90% of the purchase price of marketable products if returned within one year from date of purchase excluding shipping charges.

## II. Ruling Requested

- If the independent seller or their customer returns merchandise pursuant to this policy and receives a full refund including shipping charges, are they entitled to a full refund of the sales tax charged?
- If the independent seller or their customer returns merchandise pursuant to this policy and receives a full refund excluding shipping charges, are they entitled to a full refund of the sales tax charged?
- If the independent seller or their customer returns merchandise pursuant to this policy and receives less than the original purchase price including shipping charges, are they entitled to a full refund of the sales tax charged?
- If the independent seller or their customer returns merchandise pursuant to this policy and receives less than the original purchase price excluding shipping charges, are they entitled to a full refund of the sales tax charged?
- If the company is allowed to refund all or a percentage of the sales tax, is it entitled to deduct the applicable sales amount and corresponding tax on the return for the period when this adjustment is made?

Please contact me if you have any questions or need clarification of the information provided or ruling requested.

Thank you for your assistance.

## 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).

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 imposed by the Retailers' Occupation Tax Act with respect to such receipts. However, if the seller collected the Use Tax on such a sale, he should refund such tax to his customer to whom he makes a refund of the selling price.

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 a restocking or reshelving policy. 86 Ill. Adm. Code 130.401(b). This same concept applies in all cases when merchandise is returned to the retailer and a full or partial refund is provided by that retailer.

If a retailer 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.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M. Boggess  
Associate Counsel

DMB:msk