

Governmental units incur Retailers Occupation Tax liability when selling tangible personal property to the public for use or consumption. The only exception is the sale of an item by a governmental unit in the performance of its governmental function. See 86 Ill. Adm. Code 130.2055. (This is a GIL.)

April 23, 2010

Dear Xxxxx:

This letter is in response to your letter dated February 23, 2010, 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:

We are writing to request a ruling in regard to the application of Illinois state and local retailers’ occupation tax.

The CITY’s Library purchases books and audio-visual materials for public use. Books and audio-visual materials become damaged or obsolete over time and are removed from the library’s collection; the library also receives donations of used books and audio-visual materials. Some of these books and audio-visual materials are donated to other non-profit organizations, some are recycled, and some are discarded; the remainder are sold for 50 cents (paperback books) or one dollar (hardcover books, DVDs, CDs and VHS tapes). The city’s library used to have an annual sale of these items, but the logistics of an annual sale was challenging and was not the best use of resources – considerable storage space had to be put aside all year and a significant number of staff or volunteers had to be utilized during a short period of time. So, it was decided to place a small table at each of our three branches and sell the items all year, as the items become available, instead of just once a year.

Additionally, the CITY’s Library sells ear buds and computer discs as a convenience to its patrons that forgot to bring these items to the library. The library charges a nominal

fee of \$1.00 to help recover the costs involved (the purchase price, storage, and staff time involved).

Based on the information as provided above, the CITY respectfully requests a ruling from the Illinois Department of Revenue on whether the Library is required to collect the state and local retailers' occupation tax on used/donated excess book sales made at the city's library branches.

The issue is not under audit, appeal, or protest in any form or fashion with the State of Illinois.

If you have any questions or need additional information, please contact me.

DEPARTMENT'S RESPONSE:

Although we cannot give you a specific answer in the form of a General Information Letter, we hope you find the following helpful. Section 130.2055(a) of the Code provides that "the State of Illinois or any local governments in Illinois, or any agency or instrumentality of any such government body, incurs Retailers' Occupation Tax liability when it engages in the selling of tangible personal property at retail to the public other than in the performance of a governmental function." 86 Ill. Adm. Code 130.2055(a). The reason for this rule is to ensure that governmental units do not have a competitive advantage when selling items that are also sold by Illinois retailers.

An example of sales that may be made by a governmental body to the public that involves the performance of a governmental function is the sale of motor vehicle license plates by the State of Illinois. Where a governmental unit makes sales that are not in the direct performance of its governmental function, the sales are taxable. Examples of taxable sales by governmental units include the operation of concession stands by park districts, sales of smoke detectors by fire protection districts, sales of leaf bags by municipalities, sales of T-shirts, caps and mugs by State agencies, sales of books by libraries, and sales of books and supplies by school districts to students.

Accordingly, if the tangible personal property you are selling is in the performance of your governmental function, then you would not incur Retailers' Occupation Tax liability. In contrast, however, if the sale of that tangible personal property is in furtherance of a business enterprise, then you would incur Retailers' Occupation Tax liability.

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,

Debra M. Boggess
Associate Counsel

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