

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.)

August 5, 2010

Dear Xxxxx:

This letter is in response to your letter dated June 3, 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:

This is a request for a General Information Letter pursuant to the provisions of 2 Ill. Admin. Code 1200. The University is requesting information from the Illinois Department of Revenue regarding whether the Illinois Retailers' Occupation Tax applies to gross receipts of sales to the general public of organization's own individualized literature.

The University is among the preeminent public universities of the nation and is a world leader in research, teaching, and public engagement, distinguished by the breadth of its programs, broad academic excellence, and internationally renowned faculty.

As part of its programs for education and public service, the University has assembled various types of printed educational materials on a variety of topics. A selection of samples from several University departments which produce these publications are included in this correspondence.

The four Illinois state scientific surveys became part of the University in July 2008 (previously part of the STATE AGENCY). The University formed the ORGANIZATION to incorporate these surveys.

The publishing process may vary for each specific publication. Some are developed or written in house by only UNIVERSITY faculty, staff, or students. In some cases, the publications are a result of a collaborative effort of various researchers from other educational institutions, and/or other governmental agencies. The manuscripts are collected, and UNIVERSITY employees produce the final draft to be sent to a commercial printer for production. The printed copies are shipped to the various locations/warehouses for each particular department and inventoried. These items remain on the University premises until distributed and/or sold to [sic] mainly to education institutions (K-12 schools and colleges and universities), governmental organizations, and other not-for-profit organizations. Sales to the general public occasionally occur. These educational materials are produced with no profit margin and are restricted to cost recoveries. In most cases, the University owns the copyright of these publications.

The UNIVERSITY Extension is mandated by the Smith-Lever Act of 1914. This Act was established as a cooperative extension between the U.S. Department of Agriculture and the land-grant universities, which were authorized by the Federal Morrill Acts of 1862 and 1890. It provided for a system of agricultural extension work through specialists with the assistance of federal grants and state contributions. The main purpose of this Act is to inform individuals about current developments in agriculture, home economics, and related topics. Enclosed are a few pages of the sample "2010 Midwest Small Fruit and Grape Spray Guide" which is the result of this cooperative endeavor under the Smith-Lever Act of 1914.

LAW

- 1) The Illinois Retailers' Occupation Tax 35 ILCS 120/2 imposes tax upon persons engaged in the business of selling at retail tangible personal property for use or consumption unless it is classified as a Nontaxable Transaction per the Department's Regulation 86 Part III Admin. Code Section 130.120.
- 2) The Illinois Use Tax 35 ILCS 105/3-65 states that if the seller of tangible personal property for use would not be taxable under the Retailers' Occupation Tax despite the sale occurring in Illinois, then the tax imposed does not apply to the use of tangible personal property in Illinois.
- 3) The Department's Regulation 86 Ill Admin. Code Section 130.2105(a)(4) states that 'sales by exclusively religious, charitable, or educational organizations of books or other items containing such organizations' own individualized literature which cannot be bought from persons who are engaged in business are not subject to the Retailers' Occupation Tax even if such sales are made to the public because such sales are not competitive with retailers.'
- 4) PLR ST 97-0014, June 3, 1997. Organization sold items produced by organization. The materials were their own individualized literature, and not literature purchased from other for profit sources. Most of organizations' [sic] materials are sold only by organization and not by any bookstore. The materials are 'not sold or offered for sale by persons organized for profit' 35 ILCS 120/1 and 'cannot be bought from persons who are engaged in business.' Admin. Code Title 86, 130.2105. It was concluded that the taxpayer was exempt from the Retailers' Occupation Tax under 35 ILCS 120/1 et seq. and the Use Tax under 35 ILCS 105/3-65 et seq. to the extent of these sales. The organization's sales of its own individualized materials are not sales that are competitive with retailers.

TAXPAYER'S POSITION

Sale of University's own individualized literature is not subject to sales or use tax when not available for resale. The University believes sales of the University's own individualized literature is exempt from sales or use tax on sales to the general public and that these sales are not in competition with retailers. These selected samples are representative of what the University would consider its own literature.

RULING REQUESTED

The University requests confirmation that the Illinois Retailers' Occupation Tax or Use Tax does not apply to the sales of the University's own individualized literature (no other entities are involved) to the general public in cases where the University is the only seller and the items are not competitive and not sold for resale.

Also, the University requests a ruling to determine if the Illinois Retailers' Occupation Tax or Use Tax applies to sales of the University's own individualized literature to the general public when the same item is sold by the University for resale (exempt if obtain buyer's resale exemption number).

In addition, the University requests a ruling to determine if the Illinois Retailers' Occupation Tax or Use Tax applies to sales of a joint publication, where the University works in collaboration with other universities or governmental units to create a joint publication and sales are **only** available from the University.

Lastly, the University requests a ruling to determine if the Illinois Retailers' Occupation Tax or Use Tax applies to sales of a joint publication, where the University works in collaboration with other universities or governmental units to create a joint publication and sales are available from more than one entity associated with the creation of the publication.

Please contact me if you have any questions or require additional information.

Thank you for your assistance in this matter.

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. Our records indicate that the UNIVERSITY was granted a governmental exemption from sales and use taxes. Section 130.2055(a) of the Code, however, 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. After a review of the materials you provided with your letter, it appears that the sale of these materials would likely be in furtherance of your governmental function. This exemption would not apply, though, if the sale of these materials were for a business purpose.

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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