

Exclusively religious, educational, or charitable organizations that have been given E numbers by the Department are allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

August 10, 2010

Dear Xxxxx:

This letter is in response to your letter dated June 14, 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:

I am writing on behalf of the ORGANIZATION in request of a ruling as to whether the ORGANIZATION is obligated to collect and remit retail [sic] occupation tax on its annual sales.

Facts:

ABC is an Illinois non-profit organization dedicated to the preservation, conservation, and study of ITEMS. ABC presently has approximately 500 members organized into 6 chapters around the state. Each spring, the Central Chapter of the ABC holds a sale/fundraiser at which it sells ITEMS to the general public. A majority of ITEMS sold are donated by the Chapter members; the balance is purchased from a local STORE. The prices of the ITEMS sold are believed to generally be below normal retail value. Currently, the Central Chapter collects the tax from buyers and transfers the tax collected to the State ABC which files the sales tax return and remits the taxes to the Illinois Department of Revenue. The net after-tax proceeds of the sale/fundraiser are retained by the Central Chapter and used to make grants to local projects that use, conserve or study ITEMS. In memory, the Central Chapter is the only chapter to hold a sale or any similar fundraising event.

Questions:

1. Does the annual sale qualify under the occasional fundraiser exception to the general requirement that sales tax be collected and remitted?
2. If the annual sale does qualify for exemption, would the answer be the same if each Chapter held its own annual sale i.e., if there were sale/fundraisers held at six locations around the state- one by each chapter?

Should you have additional questions, you may contact me at the address listed below. We look forward to your response.

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.

The Illinois Retailers' Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101.

Organizations that are recognized as non-profit under Internal Revenue Code Section 501(c)(3), are not necessarily exempt organizations pursuant to Illinois tax law. Such organizations must obtain an exemption identification number (an "E number") to qualify. See 86 Ill. Adm. Code 130.2007.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an E number. The E number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that currently only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

While organizations that have received an E number are, as a general matter, subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are three limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers' Occupation Tax liability. The limited exceptions available to not-for-profit organizations described in 86 Ill. Adm. Code 130.2005 include: (1) Sales to Members (see 86 Ill. Adm. Code 130.2005(a)(2)); (2) Noncompetitive Sales (see 86 Ill. Adm. Code 130.2005(a)(3)); and (3) Occasional Dinners and Similar Activities (see 86 Ill. Adm. Code 130.2005(a)(4)).

Thus, if an organization holding an E number makes sales to both members and nonmembers, then it would not qualify for that part of the exemption concerning sales to members. Further, if any of the materials the E-number holder sells are available through business establishments, then its sales would be in competition with business establishments and, thus, it would not qualify for that part of the exemption concerning noncompetitive sales and, as such, its sales would be taxable. Lastly, turning to the third part of the exemption, Occasional Dinners and Similar Activities, the Department's regulation provides, in part, that E-number holders may "occasionally" conduct certain activities they may not be subject to tax whether or not such activities are open to the public. Note, however, the regulation defines "occasional" to mean not more than twice in any calendar year. 86 Ill. Adm. Code 130.2005(a)(4).

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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