

This letter concerns the documentation to be retained by retailers making sales to exempt organizations holding an E-number. See 86 Ill. Adm. Code 130.2005. (This is a GIL)

December 15, 2010

Dear Xxxxx:

This letter is in response to your letter received in this office October 4, 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:

Please see the attached email correspondence, in which I was referred to you to answer my question. Please contact me through phone or mail.

Thank you for your help in this sales tax matter.

Your correspondence of September 28, 2010 reads as follows:

I'm writing from ORGANIZATION and we have a sales tax exemption certificate for purchases in your state. However, I heard that now IL requires that all purchases [sic] must be from direct company funds, is this correct? If so, can I get a link to the new law?

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.

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.

All sales to an exempt entity holding an E number must be documented. See the Department's regulation at 86 Ill. Adm. Code 130.810(b) which states:

"To support deductions made on the tax return form, as authorized under the Act, on account of receipts from isolated or occasional sales of tangible personal property, on account of receipts from sales of tangible personal property for resale, on account of receipts from sales of tangible personal property made within the protection of the Commerce Clause of the Constitution of the United States, on account of receipts received by the seller from sales made to any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, on account of receipts received by the seller from sales made on or after March 21, 1963, to any governmental body or on any other ground, entries in any books, records or other pertinent papers or documents of the taxpayer in relation thereto shall be in detail sufficient to show the name and address of the taxpayer's customer in each such transaction, the character of every such transaction (whether it is a sale for resale, a sale made within the protection of the Commerce Clause of the Constitution of the United States, an isolated or occasional sale, etc.), the date of every such transaction, the amount of receipts realized from every such transaction and such other information as may be necessary to establish the nontaxable character of such transaction under the Act."

The Department's regulations further provide that:

"When a seller claims exemption from the Retailers' Occupation Tax for receipts received by the seller from his sale of tangible personal property to a corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, the seller should include such receipts in his Retailers' Occupation Tax return form, but then should deduct such receipts on the line provided for that purpose in the return form." 86 Ill. Adm. Code 130.2005(r)(1).

"Sellers claiming the benefit of this exemption are cautioned against laxity in claiming the benefit of this exemption without verifying the status of the purchaser since the seller will have the burden of proof in establishing his right to any such claimed exemption. The Courts have held repeatedly that the burden of sustaining a right to tax exemption is on the person claiming such exemption." 86 Ill. Adm. Code 130.2005(r)(3).

The procedure a retailer follows to sustain this burden and sufficiently support the deductions from gross receipts for sales made to an exempt organization will vary slightly, though, depending on whether (1) the purchaser pays by check from the exempt organization, (2) the exempt organization is directly billed, or (3) the purchaser pays by some other method. Where the exempt organization is not directly billed or the purchaser is not paying by a check from the exempt organization, the retailer has the additional obligation to verify that the purchaser is authorized to make purchases on behalf of the exempt organization in furtherance of its organizational duties (e.g., look at the list furnished by the exempt organization, on the organization's letterhead, listing the names of the individuals authorized to make purchases on its behalf). In all three instances, however, the retailer must

maintain a copy of the letter from the Department containing the exempt organization's active E-number in his books and records.

If a retailer complies with the following procedures, he or she will generally have sufficiently supported the deductions from gross receipts for sales made to an exempt organization:

- (1) The retailer must:
 - (A) retain a copy of the letter from the Department, containing the exempt organization's active E-number in his books and records; and
 - (B) maintain a log book wherein
 - (i) the purchaser records and signs his or her name, and
 - (ii) the retailer records the invoice or receipt number or other information that identifies what is being purchased, and the check number and source of check (if payment was made by check).
- (2) However, in addition to the requirements of paragraphs (1) and (2), if the purchaser pays by some method other than by a check from the exempt organization or if the exempt organization is not directly billed, the retailer must verify that the purchaser's name is on a list furnished by the exempt organization (on the exempt organization's letterhead) indicating that the purchaser is authorized to make purchases on the exempt organization's behalf in furtherance of its organizational purposes.

Note, though, depending upon the purchaser's use of the tangible personal property purchased, the purchaser may owe Use Tax. Specifically, if the tangible personal property purchased is not used in furtherance of the exempt organization's organizational purpose, the purchaser may owe Use Tax.

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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