

This letter concerns the low 1% State rate of tax applicable to drugs, medicines and medical appliances. See, 86 Ill. Adm. Code 130.311. (This is a GIL.)

December 20, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 13, 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:

REG.: Private Letter Ruling (PLR) as to tax rate applicable on sale of prescription eyewear and/or contact lenses.

Facts & Issues :

We are writing to request clarification on regulation regarding Retailer [sic] Occupation Tax and Service Occupation Tax. Our client is an optometrist, doing services under the name BUSINESS in the state of Illinois, who provides services and also sell [sic] prescription glasses and contact lenses and non-prescription items, such as lens cleaners, to consumers. Service provided by him is exempt from sales tax, any nonprescription items, such as lens cleaners, are subject to a higher tax rate. We need clarification as to whether prescription glasses and/or contact lenses should be tax exempt or should be taxed at the lower tax rate.

Law:

In Section 140.126 C1 regarding **Service Occupation Tax**, it states: 'The prescription eyeglasses, however, are medical appliances subject to the 1% rate'.

However in section 130.1980 B regarding Retailers' Occupation Tax it states: 'Consequently, they (optometrist) are not require [sic] to remit Retailers [sic] Occupation

Tax measured by their receipts from engaging in such professions, including receipts from both services and tangible personal property transferred incident to those services’.

And also in Section 130.310 C2 regarding what items qualify for the 1% tax rate, it states: ‘Corrective medical appliances such as hearing aids, eyeglasses and contact lenses qualify for exemption’.

Also in your letter ST 03-0020-PLR in the Discussion section it states: ‘Optometrists are primarily engaged in the sale of a service and are thus treated as service persons and do not incur ROT on their receipts from sales of prescription eyewear’.

So it seems like the sale of prescription eyeglasses and/or contact lenses are exempt from the 1% Retailers' Occupation Tax. Therefore, please do clarify as to whether 1% tax rate to be applied to the consumers in prescription eyeglasses and/or contact lenses based on the information above.

Conclusion:

If you would please clarify the following:

1. What taxes should be collected, if any, from consumers regarding the sale of prescription eyewear and/or contact lenses?
2. If items are purchased for resale from business outside IL and do not get charged taxes on these items (BUSINESS also do [sic] not charge taxes on consumers when they sell the items to the consumers) what additional taxes, if any, do they need to file to the IL department [sic] of Revenue when the file IL sales and use tax?
3. If BUSINESS purchases items for resale from business outside IL and do not get charges [sic] taxes on these items (but do charge taxes on consumers when BUSINESS sells the items to the consumers) what additional taxes, if any, do BUSINESS needs [sic] to file to the IL Department of Revenue while filing IL Sales and use tax?
4. If BUSINESS purchase [sic] items for resale from business outside IL and do get charged taxes on these items, do they need to file any additional taxes to the IL Department of Revenue, while filing IL sales and use tax?

Our client BUSINESS is a new business/optometrist, so is unfamiliar with Illinois Sales Tax rules and regulation [sic]. So if you could please clarify the above questions that would be greatly appreciated.

Thank you in advance for time [sic] in this matter.

If you need to contact us for any concerns or questions, please let us know.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department has decided to respond with a GIL.

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 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. 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 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. Illinois also has a Service Occupation Tax and a Service Use Tax. The Service Occupation Tax Act and Service Use Tax impose a tax on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to customers, however, then no Illinois Retailers' Occupation Tax and Use Tax would apply. Likewise, if no tangible personal property is being transferred to customers, then no Illinois Service Occupation Tax Act and Service Use Tax would apply.

The Department's regulation 86 Ill. Adm. Code 130.311 governing Drugs, Medicines, Medical Appliances, and Grooming and Hygiene Products describes how sales of products that qualify as drugs, medicines and medical appliances can be subject to the low 1% rate under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where sales are made. Those items that do not qualify for the low rate are taxed at the State rate of 6.25%, plus applicable local taxes. The same rate distinctions apply under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.126.

The definition of a medical appliance is "an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body." Examples of qualifying items include prescription eyeglasses or prescription contact lenses. When health care professionals such as optometrists render service, they are not subject to Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.1980. They are, however, subject to liability under the Service Occupation Tax Act to the extent they transfer tangible personal property incident to their rendering of service.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident of their sales of service. Servicemen incur either Service Occupation Tax liability or Use Tax liability in these transactions. The tax consequences depend upon the method used to calculate the liability. Servicemen may calculate their tax base in one of four ways: 1) Separately-stated selling price; 2) 50% of serviceman's entire bill; 3) Service Occupation Tax on his or her cost price if he or she is a registered de minimis serviceman; or, 4) Use Tax on his cost price if he or she is an unregistered de minimis serviceman that is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 140.101.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

Note, though, if a serviceman contracts out all or a portion of the service that he will provide, he is acting as a primary serviceman in a multi-service situation. As a primary serviceman, he engages the services of a secondary serviceman in order to obtain all or part of the product and services desired by the service customer. See 86 Ill. Adm. Code 140.145. Generally, when a primary serviceman purchases tangible personal property from a secondary serviceman, the primary serviceman shall determine his cost price either by using the separately-stated selling price of tangible personal property set forth on the invoice from the secondary serviceman or, if no selling price is separately stated, 50% of the total invoice including labor and service charges, in the absence of proof (e.g., the secondary serviceman's purchase invoices showing his cost price) of the consideration paid by the secondary serviceman for the purchase of such property. See 86 Ill. Adm. Code 140.145(f).

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
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