

Any governmental body in Illinois, or any agency or instrumentality of any such governmental 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. See 86 Ill. Adm. Code 130.2055(a). (This is a GIL.)

May 11, 2011

Dear Xxxxx:

This letter is in response to your letter dated February 4, 2011, 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:

The purpose of this letter is to request a Private Letter Ruling regarding a possible exemption from Retailers [sic] Occupation Tax.

I represent the AGENCY, which is an agency of county government which is organized and existing pursuant to 55 ILCS 5/5-25001 et seq. The AGENCY, in its efforts to carry out programs and activities directed and promoting and protecting the health of the citizens of COUNTY, provides dental services to county residents. In furtherance of this goal, the AGENCY desires to acquire bulk quantity of toothbrushes at a discounted rate and to thereafter, sell these toothbrushes at the same discounted rate to its clients. The AGENCY's clientele includes those who, due to financial limitations, would not be able to secure dental services if not for the AGENCY's discounted provision of these services.

The question upon which I am requesting a letter, is whether or not the AGENCY's selling toothbrushes to its clients at the same discounted rate that the AGENCY pays for said toothbrushes would constitute a taxable event under the Retailers [sic] Occupation Tax Act, and if so, whether such a sale might fit within the parameters of one or more exemptions from the application of the Retailers [sic] Occupation Tax.

Thank you for your consideration. Please feel free to call with any questions or clarifications that you may require.

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 declines to issue a Private Letter Ruling and has decided to respond with a General Information Letter.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail 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.

Administrative rules adopted by the Illinois Department of Revenue provide that "the State of Illinois or any local governments in Illinois, or any agency or instrumentality of any such governmental 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." See 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.

The rule goes on to discuss items that are considered to be sales in the performance of a governmental function and that are, therefore, not subject to Retailers' Occupation Tax, such as the sale of motor vehicle license plates by the State of Illinois. In accordance with this rule, a county health department that resells toothbrushes to its clients at the same price that it paid for the toothbrushes would likely be considered to be doing so in the performance of its governmental function. As a result, those sales would generally not be subject to Retailers' Occupation 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.

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk