

This letter concerns purchases of food and drinks by exempt organizations or their members. 86 Ill. Adm. Code 130.2145(b). (This is a GIL.)

May 18, 2012

Dear:

This letter is in response to your letter dated August 16, 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:

I spoke to one of your representatives in the Taxpayer Service Center recently and he suggested I contact your office in order to obtain a ruling for a new client.

This company will be holding social events in various cities in the United States, including Illinois. They will invite members of their online social groups to these various events – these events are not open to the public. A typical event might be a happy hour at a restaurant where the company representative would contract with the restaurant for certain beverages and food to be provided by the restaurant to the members.

In most cases, the attendees pay their tab for food and drinks directly to the restaurant, along with the appropriate sales tax.

In a few cases, the representative would pay the restaurant directly for all food and beverages, including the sales taxes charged by the restaurant.

The members who attend pay a certain amount, say \$20 per person to attend the event and this amount is either collected when they arrive or is prepaid online by the member.

Is the \$20 paid by the member to attend the event subject to sales tax or admissions tax? Is the \$20 paid by the member to attend the event subject to sales tax or admissions tax if it includes any food or beverage (alcoholic)?

If they rented a room and hired a caterer and charged the members to attend that event, would the answer be the same?

Under what circumstances, if any, would the amount charged to the member for attending an event be subject to the sales/admissions tax?

Thank you very much for your very able assistance.

DEPARTMENT'S RESPONSE:

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.

Generally, the sale of admission ticket is the sales of an intangible. Intangible personal property is not subject to sales tax. See 86 Ill. Adm. Code 130.120. However, when an admission ticket entitles a customer to food or drink in addition to attendance at an event, it is subject to tax. See 86 Ill. Adm. Code 130.2145.

When members of an organization meet at a hotel, restaurant or other place of business where food or drinks are sold and pay for those items, the hotel, or other vendor of meals, is considered to be selling such tangible personal property directly to members as users or consumers, and the sales shall be considered to be taxable. This is true even if the organization collects from the members and makes payment to the vendor, and even if the organization is permitted to retain a portion of what it collects for its own purposes. In this situation, the organization is deemed to be acting for the accommodation of all concerned and is not deemed to be standing in the role of a purchaser and reseller. The measure of the tax is the amount received by the hotel, etc., for the tangible personal property that it furnishes. 86 Ill. Adm. Code 130.2145(b).

Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. Section 1 of the Retailers' Occupation Tax Act defines the term, "selling price," as the "consideration for a sale valued in money ... without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever...." See, 35 ILCS 120/1. As indicated by this definition, a retailer's costs of doing business are not deductible from his gross receipts. This principle is also articulated in Section 130.410 of the Department's rules. See 86 Ill. Adm. Code 130.410.

As a result, tax is imposed upon a caterer's entire gross receipts from sale, without any deduction on account of service costs or other overhead costs. A caterer's gross receipts would include all receipts associated with his sale of food. Such costs would include charges for linens, tables, chairs, dishes, glasses, flowers, labor, set-up, and delivery. Each of these items is a part of the cost of doing business as a caterer. It is immaterial that the customer is separately billed for the price of these items. These costs are costs of doing business as a caterer, just as they would be part of the overhead expenses incurred by a restaurant owner.

When a caterer makes separate charges to customers for items which are not associated with the sale of food, such items are not taxable, provided that they are separately listed on the invoice to the customer and are initialed by the customer. This would be the case, for instance, with charges for entertainment (singers, bands, and the like).

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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,

Richard S. Wolters
Associate Counsel