

August 5, 2014

Dear Xxxx:

This letter is in response to your letter dated April 9, 2014, 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 to request a Letter of Ruling regarding Sales & Use Tax for SCHOOL, Taxpayer ID XX-XXXXXXX, Account ID XXXX-XXXX, I have discussed the following circumstances over the phone with an IDOR representative. He indicated that based upon the information I provided and the IDOR Rules Section 130.2005, Section 3, Paragraph B, his non-binding recommendation is that SCHOOL does not need to pay Sales & Use Tax and no longer needs to file form ST-1.

The information I provided to the IDOR representative via phone is as follows:

- The students at SCHOOL are required to read specific books for various classes they take at the high school.
- The books that are to be read by the students are selected by SCHOOL Staff on an annual basis for the upcoming school year.
- The SCHOOL library staff orders and purchases the books selected by the staff. SCHOOL does not pay sales tax on these purchases.
- The books are sold to the students at the time they are to be used during the semester. The books are sold at cost plus the sales tax that is to be remitted to the state. A small amount of profit is made due to rounding of the sales price on the sale of these books. For example, if the cost of a book is \$4.50, the amount charged to the student would be $\$4.50 \times 1.07 = \4.82 rounded to \$5.00.
- Books are sold only to students.

I would like to request a Letter of Ruling based upon the above information and the IDOR Regulations. Please feel free to contact me with any questions at (XXX)XXX-XXXX.

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 to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101.

These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

When an Illinois retailer sells tangible personal property and delivers it in Illinois, sales tax is due unless an exemption can be documented. The resale exemption is applicable when making purchases of tangible personal property that the purchaser intends to in turn sell. Thus, if a school purchases books with the intent of selling them to its students, the school can purchase them tax free for resale if the school gives its supplier a resale certificate. For general information regarding resale certificates, the Department's regulation entitled "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale," is found at 86 Ill. Adm. Code 130.1405.

A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale.

The Department's regulation entitled "Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons is found at 86 Ill. Adm. Code 130.2005. That regulation provides, in part, that exclusively charitable, religious and educational organizations that have an exemption identification number ("E" number) incur Retailers' Occupation Tax liability when they engage in selling tangible personal property at retail except in three situations – (1) sales to members, etc., (2) noncompetitive sales, and (3) occasional dinners and similar activities.

The first exception, noted above, is that the sales by such an organization are not taxable if they are made to the organization's members, or to its students in the case of a school or to its patients in the case of a nonprofit hospital which qualifies as a charitable institution, if the sales are primarily for the purposes of the selling organization. Please note that the Department has determined that the selling of school books and school supplies by schools at retail to students is not be deemed to be "primarily for the purpose of" the school which does such selling. Consequently, schools incur Retailers' Occupation Tax liability when they engage in selling school books or school supplies at retail to their students. See 86 Ill. Adm. Code 130.2005(a)(2)(C) and 130.2005(b)(4)(C)(i).

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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