

ST 16-0002-GIL 01/06/2016 SERVICE OCCUPATION TAX

Membership fees are generally considered intangibles and are not subject to Retailers' Occupation Tax or Use Tax. If a membership charge entitles the customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to the service, the charge may result in Retailers' Occupation Tax liability, Service Occupation Tax liability, or Use Tax liability. See 86 Ill. Adm. Code 130.401(d) and 86 Ill. Adm. Code 140.101. (This is a GIL.)

January 6, 2016

Dear Xxxxx:

This letter is in response to your letter October 29, 2015, 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:

ABC sells nutritional, dietary, and skin care products through a multi-level network of independent distributors. ABC is considered an "MLM" or multi-level marketer such as Amway. ABC's only United States-based physical location is in CITY, STATE. ABC charges sales tax based upon the address to which we ship and based upon full suggested retail price. On behalf of ABC and its ABC independent distributors, ABC files one consolidated state sales/excise tax return in lieu of each independent distributor filing a separate return with your state.

While we have obtained previous rulings from your state on the taxability of our products and charges, we would like to ensure that our sales tax collection procedures are in compliance with all current law. Please provide us with a letter ruling or binding opinion on the taxability of our renewal, dashboard and personal website fees.

Renewal Fees:

Distributors are required to renew their status annually. The annual renewal fee of \$ is paid by each distributor to remain in “active” status. All “active” distributors receive a Lifestyle magazine on a quarterly basis and maintain their wholesale discount on products purchased. Distributors earn a percentage discount off the retail price on the products purchased *based* on the distributor’s *volume* of products purchased. Active distributors are also eligible to receive distributor business support services and access to the ABC web site.

Please note customers are not required to pay a renewal fee, yet customers also receive the quarterly Lifestyle magazine. Customers may also be eligible to receive a percentage discount off the retail price on the products purchased based on varying promotions.

Dashboard and personal website fees (sold as a bundle):

Distributors have the option of purchasing the dashboard and personal website (*sold as a bundle only*). The ABC distributor dashboard service provides a distributor with immediate 24/7 access to information on all activity on the distributorship and online tools to track, manage and grow the business. Personal websites allow the distributor to give ABC presentations through a mobile device. The Personal websites also enable the distributor to add customers and downline distributors to their own shopping cart and online sponsoring.

Please send the letter rulings or binding opinions to my attention at the address provided. My contact information is listed below in case further information is required to issue an opinion.

Thank you for your assistance in this matter.

DEPARTMENT’S RESPONSE:

Generally, the Department does not consider receipts from the sale of membership fees to be gross receipts from the sale of tangible personal property. Rather, a membership fee is considered an intangible, which is not subject to the Retailers' Occupation Tax Act or the Use Tax Act. 86 Ill. Adm. Code 130.401(d). This is the case when the sale of membership rights does not include the transfer of tangible personal property. However, if the membership charge entitles the customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to that service, then that charge may result in either Retailers' Occupation Tax liability, Service Occupation Tax liability or Use Tax liability, depending upon the serviceman's activities. See 86 Ill. Adm. Code 140.101. Note, however, typically gross receipts from the sale of newspapers and magazines in Illinois are not subject to tax under the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 130.2105.

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, 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to customers, then neither the Illinois Retailers' Occupation Tax Act nor the Use Tax Act would apply. Likewise, the Service Occupation Tax Act and Service Use Tax

Act are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. Depending on the nature of the transaction, the Service Occupation Tax Act or the Service Use Tax Act could apply, but if no tangible personal property is being transferred to customers incident to the services being provided, then neither the Illinois Service Occupation Tax Act nor the Service Use Tax Act would apply.

We urge you to review the regulation concerning the "Filing of Returns for Retailers by Suppliers Under Certain Circumstances" found at 86 Ill. Adm. Code 130.550. This regulation explains that manufacturers, importers or wholesalers can enter into an "agency agreement" with the Department, whereby they register, file returns and remit Retailers' Occupation Tax on behalf of their local distributors. Please note that such an arrangement must be accepted by the Department and is subject to any written objections of the retailers that would be affected.

The Agency Agreement (RR-80) may be used to obtain approval of such an arrangement with the Department. Under this type of agreement, the manufacturers, importers or wholesalers sell products to local distributors and collect tax from the distributors based upon the selling price to the ultimate consumers. The applicable tax is not based upon the sale to the local distributors. The appropriate tax must be collected for the sale to the distributors' ultimate customers, which includes State and any applicable local tax.

When manufacturers, importers or wholesalers operate under this type of agency agreement, the local distributors need not register, file returns or remit taxes since the manufacturers, importers or wholesalers have agreed to this responsibility. The local distributors should, however, retain a copy of the agreement. If they fail to provide such documentation upon demand by the Department, they will be required to register, file returns, and remit the appropriate amount of tax directly to the Department. Distributors who prefer to register and remit their own taxes may opt out of the agency agreement.

Taxpayers may acquire form RR-80 (Agency Agreement) by contacting the Department's Central Registration Unit located at the Illinois Department of Revenue, 101 West Jefferson, Springfield, Illinois 62702.

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

DMB:bkl