

ST 16-0017-GIL 05/02/2016 SALE AT RETAIL

Persons selling tangible personal property at retail are required to register with the Department prior to making sales at retail. See 86 Ill. Adm. Code 130.701.
(This is a GIL.)

May 2, 2016

Dear Xxxxx:

This letter is in response to your letter dated January 21, 2016, 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:

My name is NAME and I work in the compliance department of ABC a Money Services Business (“MSB”) located in CITY, STATE. ABC is registered with AGENCY as an MSB and registered with the STATE as a Money Transmitter with an active Type II license. ABC is primarily a foreign currency exchanger which services wholesale and retail clients.

ABC defines a wholesale customer as a Bank, MSB, Travel Agent, or other Corporation to which we provide foreign currency exchange services, in order for our wholesale customer to service their own clients. ABC defines a retail customer as a U.S. or Foreign Citizen conducting a foreign currency exchange transaction on their own behalf at one of our retail store locations. In addition to foreign currency exchange, ABC also provides check cashing services (less than \$ XXX US Dollars per day) and is a seller of prepaid access and traveler’s checks at our retail store locations throughout the United States.

ABC is in the market to expand our product and services at our retail locations (and possibly to wholesale customers) and we are looking into the possibility of selling gold

coins and bars to our customers. ABC would like to sell 1oz TYPE 1 Gold Coins, 1oz TYPE 2 Gold Leaf Coins and 1oz TYPE 3 Gold bars.

ABC intends to purchase the gold coins from XYZ, a registered precious metals vendor operating in STATE 2, or other companies of a similar operating model. ABC intends to offer retail customers the option of purchasing one (or more) gold coin or bar with an average cost of \$XXX US Dollars per piece. ABC notes that it will not have a sales tax collection obligation under Illinois Act 83-1495.

ABC is writing to seek an advisory opinion from Illinois Department of Revenue related to licensing requirements for Precious Metals Dealers under Illinois Law:

1. In the State of Illinois, would ABC be considered a “precious metals dealer” or “coin dealer” and require licensing if gold coins and bars were sold to patrons (Individuals) through our retail branch network located primarily in shopping malls throughout the state?
2. In the State of Illinois, would ABC be considered a “precious metals dealer” or “coin dealer” and require licensing if gold coins and bars were sold to our wholesale customers, whom would further sell the product onward to their patrons?
3. In the State of Illinois, would ABC be considered a “precious metals dealer” or “coin dealer” and require licensing if gold coins and bars were purchased from our wholesale customers, from which we would further sell the product onward to retail or wholesale customers?

ABC does not believe it requires a license to sell gold coins at our retail locations but is unclear whether the sale/purchase of gold coins to wholesale customers with the intention to resell would change its licensing requirements.

ABC is committed to complying with all federal and state regulations and will await your opinion to ensure we are properly licensed under Illinois Law. We will be pleased to provide you with any further information which you might require to advise us accordingly.

DEPARTMENT’S RESPONSE:

The Illinois Department of Revenue does not handle the licensing of “precious metal dealers” or “coin dealers.” That is handled by the Illinois Department of Financial and Professional Regulation. With respect to sales tax, though, we hope you find the following helpful.

The Illinois Retailers’ Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in the business of selling at retail tangible personal property. Section 2a of the Retailers’ Occupation Tax Act, 35 ILCS 120/2a, makes it unlawful for any person to engage in the business of

selling tangible personal property at retail in Illinois without first obtaining a certificate of registration from the Illinois Department of Revenue. This applies to all persons whether they sell at swap meets, flea markets, or as transient vendors along the roadside.

However, persons who exclusively make either wholesale sales and/or exempt sales are not required to register and remit Retailers' Occupation Tax. The tax applies only to sales of tangible personal property for use and consumption, and not for resale. Consequently, if all of your sales are for resale, you will not be required to register, file returns and remit tax. You may, however, want to obtain a resale number from the Department so that you have the ability to provide your suppliers with valid Certificates of Resale. See 86 Ill. Adm. Code 130.1405. So long as you do not make taxable retail sales, and engage exclusively in wholesale and/or exempt transactions, registration for a resale number will not expose you to reporting and tax remittance requirements. If, however, you make any sales at retail (non-resale or sales to end users), you will be required to register to collect and remit taxes.

For general information, please see 86 Ill. Adm. Code 130.1910, which describes the exemption from Illinois Retailers' Occupation Tax liability for certain collector coins, medallions, legal tender and bullion.

Gross receipts from the sales of legal tender, currency, medallions, gold or silver coinage issued by the State of Illinois, the government of the United States of America, or the government of any foreign country, and bullion, are exempt from Retailers' Occupation Tax. See 120 ILCS 2-5(18) and 86 Ill. Adm. Code 130.1910(c). No certification or exemption identification numbers are required in order to document the nontaxable sales of such items. Because of that exemption, many coins sold by a dealer are exempt. This is true even if they have appreciated in value and have become rare and are unlikely to be used in today's commerce.

Note, however, when a government or entity that is not listed in the statute issues a coin or similar item, it is subject to tax pursuant to Section 130.1910(a). For example, commemorative medallions minted by private businesses or other states would be subject to tax. Please be advised that gold coins or other coins incorporated into a pendant or other jewelry lose their exempt status. The entire gross receipts from the sale of such jewelry is taxable.

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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