

ST 16-0068 GIL 12/27/2016 SALE OF SERVICE

If tangible personal property is transferred to the customer incident to a sale of service, then Service Occupation Tax would apply. See 86 Ill. Adm. Code Parts 130 and 140. (This is a GIL.)

December 27, 2016

RE: Private Letter Ruling-Transaction Privilege Tax
COMPANY
EIN: #####
ADDRESS
CITY, STATE ZIP CODE

Dear Xxxxx:

This letter is in response to your letter dated June 15, 2016, in which you requested 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:

We are writing to request a Private Letter Ruling from the Department for COMPANY or the “Company”) and the proper sales and use tax treatment of transactions involving charges for the service of providing non-transplantable human tissue for research, training and overall medical advancement. The company currently is not under audit by the Department.

During the past decade, with advancements in medicine and medical technology, there has been a growing need for non-transplantable human tissue. COMPANY is able to meet this essential need by educating the public about the societal and medical research related benefits of whole body donation, and receives these donations from donors at a variety of venues including hospitals, funeral homes, and hospices. These donations are subject to legal consent and authorization from the donor and/or their next of kin. By donating to COMPANY, donors and

their families are able to meet their own or loved ones' wishes to help support and further the advancement of scientific and medical research.

Founded in 20XX, COMPANY is a non-transplantable human tissue bank that provides services associated with the processing, storage, preparation and transportation of tissue specimen to clients for medical research and training purposes. The Company's customers include medical facilities, hospitals, universities, academic medical centers, medical training organizations and medical device manufacturers, amongst others. COMPANY receives donated human bodies shortly after the time of death in order to provide the medical community with either complete, intact cadavers, or portions of human tissue according to its customers' specific needs associated with their training and research requirements. COMPANY makes no payments to a donor's estate or their family for the donated remains. Highly skilled experts are used to remove parts in such a way as to preserve the integrity and usefulness of those bodies and requested tissue for specific training and research purposes. Any tissues that are not recovered for a qualified use are cremated and either disposed of or returned to the next of kin upon request.

In general, public policy and social norms rule out establishing a marketplace for the sale of vital human organs and body tissue. Commodifying the human body and its organs, thereby transforming what should be an act of altruism into a commercial transaction, is viewed as contrary to our basic social values (*Public Policy and the Sale of Human Organs*, Cynthia B. Cohen, Kennedy Institute of Ethics Journal, Vol 12, #1 (2002)). This has resulted in federal and state statutes and regulations outlawing the sale of human tissue. Specifically, the National Organ Transplant Act ("NOTA") of 1984 bans the sale of human organs and tissue for transplant, but allows tissue banks to charge fees for tissue and services associated with procuring and preparing tissue. In addition, 42 U.S. Code § 274e(a) states that "It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce." Further, the federal Public Health Service Act prohibits the sale of human fetal tissue as stated in 42 U.S. Code § 289g-2(a), "It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce." Additionally, the Uniform Anatomical Gift Act (noted by Illinois Section 755 ILCS 50/1), governs both tissue for transplantation into living patients as well as the making of anatomical gifts for the advancement of science. Section 16 of the Uniform Anatomical Gift Act (2006) states that "A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation or disposal of a part."

These legal parameters have shaped the manner in which human bodies are gathered and then, in whole or in part, distributed, with no distinction on whether the parts are used for purposes of research or transplanting. As is customary for the industry, the Company charges fees to its customers in order to recover the costs associated with the acquisition, storage, preservation, preparation and

distribution of the tissue. Cost-plus pricing, rather than supply-demand metrics, establish service charges invoiced to the Company's customers. There are no charges for human tissue. COMPANY is properly following the various longstanding nationwide legal and social norms which provide that there can be no sale of a human body or vital body parts. The Illinois legislature has seen fit to also address this topic in § 720 ILCS 5/12-20, which, like the Uniform Anatomical Gift Act above, states:

(a) Except as provided in subsection (b), any person who knowingly buys or sells, or offers to buy or sell, a human body or any part of a human body, is guilty of a Class A misdemeanor for the first conviction and a Class 4 felony for subsequent convictions.

(b) This Section does not prohibit:

- (1) An anatomical gift made in accordance with the Illinois Anatomical Gift Act [755 ILCS 50/1 et seq.].
- (2) The removal and use of a human cornea in accordance with the Anatomical Gift Act [755 ILCS 50/1 et seq.].
- (3) Reimbursement of actual expenses incurred by a living person in donating an organ, tissue or other body part or fluid for transplantation, implantation, infusion, injection, or other medical or scientific purpose, including medical costs, loss of income, and travel expenses.
- (4) Payments provided under a plan of insurance or other health care coverage.
- (5) Reimbursement of reasonable costs associated with the removal, storage or transportation of a human body or part thereof donated for medical or scientific purposes.
- (6) Purchase or sale of blood, plasma, blood products or derivatives, other body fluids, or human hair.
- (7) Purchase or sale of drugs, reagents or other substances made from human bodies or body parts, for use in medical or scientific research, treatment or diagnosis.

The fees which COMPANY lists and charges are an aggregate reflection of the services it provides related to its tissue removal, processing, preservation, storage, transportation and disposal, and are allowable under Illinois statutes. Similarly, the above statute makes it clear that the company cannot be in the business of making a sale of human tissue without being subject to substantial criminal penalties.

With this in mind, we believe that COMPANY is not involved in a sale, is not a retailer and should not be taxable under Illinois Section 2, 35ILCS 120/2 or similar statutes. We believe COMPANY is a service provider, and should not be required to collect sales or use tax on its charges to its clients. To determine otherwise would contravene public policy and legal designs intent on preventing a marketplace for body parts to develop. Based on the information above, and the fact that COMPANY customers are billed for services on a cost-plus basis, we believe the transactions involving the provision of a human body or body parts to a third party for research and/or medical advancement purposes should be exempt from the Illinois sales tax.

We understand that there may be other exemptions from the Illinois sales tax available to the services in question, including customer exemptions for transactions involving tissue transfers to hospitals, universities, and medical research facilities, and possible research and development exemptions for sales to medical device manufacturers. In this instance, we are requesting the Department's opinion on the taxability of these transfers of tissue overall, and the position that COMPANY should be treated as a service provider and not a retailer, without considering customer specific exemptions.

We respectfully request that the Department review our facts and reliance on previous and current regulations, statutes and precedents and provide guidance as to the tax treatment of these transactions. Additionally, we ask that the Department not disclose the name of the Taxpayer, COMPANY, in a published ruling to the public. Should the Department need additional information in order to make its determination, or would like to discuss any item or issue further, I can be reached at ###-###-####. Thank you for your consideration of this matter. We look forward to your reply.

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 recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope, however, the following General Information Letter will be helpful in addressing your question.

The 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. 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.

Retailers' Occupation Tax and Use Tax do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services (*i.e.*, servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. If no tangible personal property is transferred incident to service, no Service Occupation Tax is incurred. Tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The serviceman's liability may be calculated in one of four ways:

- (1) separately-stated selling price of tangible personal property transferred incident to service, provided that in no event may the tax base be less than the serviceman's cost price of the tangible personal property transferred;
- (2) 50% of the serviceman's entire bill, provided that in no event may the tax base be less than the serviceman's cost price of the tangible personal property transferred;
- (3) Service Occupation Tax on the serviceman's cost price of tangible personal property transferred incident to service if the serviceman is a registered de minimis serviceman; or
- (4) Use Tax on the serviceman's cost price of tangible personal property transferred incident to service if the serviceman is de minimis and is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

It appears from your letter that your client is making sales of service and is a serviceman. As a serviceman, your client does not incur Retailers' Occupation Tax. Service Occupation Tax is imposed upon all persons engaged in the business of making sales of service on all tangible personal property transferred incident to a sale of service and is calculated as explained above. It appears from the limited information provided in your letter that your client may qualify as a de minimis serviceman that is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. If this is the case, your client could remit Use Tax on his cost price of the remains (and any other tangible personal property transferred incident to service). Your letter indicates that your client incurs no cost to obtain the remains, as they are donated to your client. Consequently, your client's cost price would be zero for these remains.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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