

Caterers incur Retailers' Occupation Tax liability on their entire gross receipts from sale, without deductions on account of overhead costs, such as charges for linens, dishes, flowers or delivery. (This is a GIL.)

January 28, 2020

Dear Xxxx:

This letter is in response to your letter dated September 19, 2019, 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:

Our firm, on behalf of our client ("Company"), is respectfully seeking sales/use tax guidance. Following below is our statement of the issue, a summary of the relevant facts, as well as discussion and analysis of the issue. We appreciate your response to this request.

Issue:

The Company holds itself out, and habitually engages, as a service provider to its clients. Is it proper for the Company to not charge sales/use taxes on the fees it invoices its clients?

Facts:

The Company is a corporation that maintains its headquarters and principal place of business in State X. The Company also maintains local offices in various states, including [State at Issue].

The Company is a service provider: The Company helps coordinate meetings and events. Nearly all of the Company's clients are businesses. The types of meetings held by these clients include employee meetings, client meetings, and investor-relationship meetings.

The Company's only location(s) in [State] is/are the rented office where the Company's employees work. The Company does not own or hold any inventory, and the Company does not hold itself out as a retailer.

The Company oftentimes is referred new clients through the Company's relationships with various management and marketing associations and foundations. The Company's clients seek assistance in arranging an event with a particular focus such as corporate social responsibility (CSR) team building. A well-run CSR program can help build bonds, strengthen communication skills, and boost morale, while making a positive difference in the world. Oftentimes, the client may desire for the event to be held in a different city or state than where the client is located.

To make the event a success, the Company negotiates contracts with various providers, including restaurants and caterers, equipment rental providers, and performing artists (e.g., singers, bands, caricature artists). The Company may also purchase tickets for attendees to attend a theater or a sporting event.

The Company does not solicit the sale of, or make any sales, to individuals and businesses, of food, rental equipment, or any theater or sporting event tickets on a standalone basis. Rather, the Company is engaged in coordinating various contracts for clients to help shape an experience for the client.

The Company negotiates the fee amount with its clients based on various factors, including number of participants/attendees, the location, the date of the event, and the type of event sought. The Company does not share with its clients the various invoices that it receives. Instead, the Company embeds its service fee (i.e., the Company's net service revenue) into its estimated sum of payments made to other service providers when the Company presents invoices to clients.

The Company is not a "marketplace facilitator." The Company does not facilitate sales for any third-party retailers. The Company does not operate any e-commerce forum for its clients to make purchases from any service provider or seller of tangible personal property.

Discussion and Analysis:

The Company is not a retailer. It does not own or hold any inventory. It does not hold itself out as, or make, retail sales of tangible personal property at any Company location.

The Company is a service provider. In fulfilling its service contract terms with its clients, the Company contracts with other businesses, including restaurants, individual artists, performers, and ticket sellers/brokers. The locations at issue vary with each contract for each client.

The Company receives invoices that include the applicable sales/use taxes on the charges from various contracting parties (restaurants, equipment rental companies, ticket sellers/brokers, etc.) The Company pays the invoice amount, including the sales/use taxes charged.

The Company maintains that as a service provider, it is appropriate for the Company to pay the sales/use taxes invoiced by its supplier. Further, the Company maintains that it

is appropriate for it not to charge sales/use tax on the fees it charges its clients. Doing so would create a pyramiding or cascading of sales/ use taxes.

The various parties with whom the Company contracts have (or should have) the knowledge of the particular sales/ use tax laws as applied to their location and the nature of the goods and services that they provide, including any special local sales/use tax laws that apply to restaurants, theater, equipment rental, etc. The Company asserts that the sales/use tax laws are properly applied to these parties, and not to the Company's service revenues it receives from its clients.

The Company notes that some states have already ruled on this issue and held that a business that is similar to the Company's business should pay sales /use taxes on its purchases (and not on its sales). See, e.g., *In the Matter of Key Events, Inc.* (Cal. State Board of Equalization Nov. 14, 2017). While we acknowledge that this California ruling is not binding on [State], we believe that it carries persuasive value, and we ask that you find that your sales/use tax laws apply to the above facts in a similar manner. Moreover, in speaking with a number of competitors in the Company's industry, others also view their business as a professional service provider and they do not charge sales taxes but, instead, pay sales taxes invoiced from the various providers (restaurants, caterers, and alike). Indeed we maintain that the client's true object is the Company's services in arranging the event.

DEPARTMENT'S RESPONSE:

Your letter indicates that you are engaged in business as a "party planner." In some instances, you act as a caterer. In other instances, you may not act as a caterer, and only arrange events in which no tangible personal property is transferred. The tax liabilities you incur will differ depending upon the activities you engage in.

The Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property for use or consumption. See 86 Ill. Adm. Code 130.101. Persons that are engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their gross receipts from such sales. Such persons specifically include caterers. See Section 130.2145.

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 ... and shall be determined 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. The regulation specifically states that in calculating Retailers' Occupation Tax liability, "freight or transportation costs ... or any other expenses whatsoever" are not deductible from gross receipts.

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 and set-up and delivery. Each of these items is a part of your cost of doing business as a caterer. It is immaterial that the customer is separately billed for the price of these items. They are simply 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 (musicians or bands).

Please also see 86 Ill. Adm. Code 130.2145(e) for the taxability of charges for banquet rooms. If the true object of the transaction is the rental of the banquet room, and if food or beverages are provided only incidentally to the room rental, no tax is incurred on the charges for the room rental. The Department deems an incidental provision of food or beverages to include the providing of non-alcoholic beverages, such as coffee, tea and soft drinks, and the providing of snacks, such as cookies, popcorn, candy, doughnuts, fruits and raw vegetables. If no separate charge is made under the contract for the incidental amount of food or beverages provided, the rentor is considered the user of the food or beverages and incurs Use Tax on its cost price of the food or beverages transferred incidentally to the rental of the room. If a separate charge is made for the food and beverages transferred incidentally to the rental of the room, the rentor incurs ROT on the selling price of the food or beverages. If the true object of the transaction is the sale of food or beverages, any room rental charges are part of the seller's cost of doing business and are includable in the seller's gross receipts even if the charges for the room rental are separately stated on the agreement between the seller and its customers.

Please note that if foods other than snacks are provided or if alcohol is provided, the Department deems the sale of food or beverages, not the rental of the room to be the true object of the transaction. In this situation, the banquet provider would incur Retailers' Occupation Tax on its gross receipts from the sale of the food and beverages, along with any charges made for the rental of the room.

Persons who are engaged in activities in which no tangible personal property is transferred do not incur tax liability. The Retailers' Occupation Tax, Use Tax, Service Use Tax and Service Occupation Tax apply only when there is a transfer of tangible personal property.

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

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