

This letter determines that an educational institution that provides optometry services as part of its curriculum does not incur tax on the transfer of tangible personal property incident to the providing of that service. See generally 86 Ill. Adm. Code 130.2005. (This is a PLR.)

January 29, 2020

Dear Xxxx:

This letter is in response to your letter dated April 2, 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:

We are requesting a Private Letter Ruling on behalf of our client pursuant to 86 Ill. Admin Code 1200.110. Pursuant to the regulation, we attest on behalf of our client the following:

1. The taxpayer is not under audit for any tax, nor is the taxpayer the subject of any pending litigation related to the request.
2. The requested ruling relates to Service Occupation Tax for periods open under the statute of limitation and going forward.
3. To the best of our knowledge, the Taxpayer and Representative are not aware of any contradictory authorities nor are we aware of any rulings covering the specific facts and questions addressed below.
4. Neither the taxpayer nor its Representative have previously requested a ruling from the Department of Revenue on this issue.

Statement of Facts

The taxpayer is a not-for-profit educational institution located in CITY and organized for the purpose of training Optometrists. As part of its educational function, doctors and students provide eye examinations, prescription glasses and contact lenses as well as non-prescription sunglasses to low income patients in the community. The Taxpayer has been issued and holds an exemption for sales and property tax by the Illinois Department of Revenue, and thus has demonstrated that it qualifies for the sales and

use tax exemption. The Taxpayer is also registered for sales and use tax and collects and remits sales tax on its sales of non-prescription sunglasses.

The College is located on the South Side of CITY and operates a clinic that provides eye examinations, glasses fittings and contact lens to patients. Most patients are from the local area and use a combination of Medicare, Medicaid, other state programs, grants and insurance programs. The tangible personal property transferred incident to the service (lens, frames, and contacts) therefore largely benefit low income patients as well as being used to train optometrists.

The Taxpayer performed an analysis of its costs and revenues for the last three years and determined that the cost price of tangible personal property transferred incident to it [sic] services was approximately PERCENT each year. The Taxpayer considers itself a de minimis service man who is also registered for Retailers [sic] Occupation Tax. We would be happy to provide additional information on this analysis if needed.

Ruling Requested

The Taxpayer requests a ruling that its sales tax exemption applies to the Service Occupation Tax obligation for de minimis servicemen who are registered for Retailers [sic] Occupation Tax and that the Taxpayer does not owe Service Occupation Tax on the cost price of its materials transferred.

Discussion and Relevant Authorities

The Taxpayer is not aware of any relevant authorities addressing the Use Tax or Service Occupation Tax liability of a de minimis serviceman that holds an Illinois Exemption Number. The Taxpayer acknowledges that the provision of prescription glasses and contact lenses would be considered an Illinois regulation [sic] 86 Ill. Admin. Code 130.1980 states that opticians and optometrists who provide prescription eyeglasses and contacts are not engaged in the sale of tangible personal property but should be considered servicemen under the service occupation tax rules. 86 Ill. Admin. Code 130.1980

Section 140 of the Service Occupation Tax regulations divides servicemen into three categories- de minimis servicemen who are not required to be registered for Retailers [sic] Occupation Tax (140.108), de minimis servicemen who are registered for Retailer's [sic] Occupation Tax, (140.109) and non-de minimis servicemen. "De minimis" in this context is defined as a serviceman whose cost ratio of tangible personal property transferred incident to sales of services is less than 35% of its gross annual receipts from all sales of service. 86 Ill. Admin Code 140.106. Generally, optometrist [sic] who are de minimis servicemen registered as retailers collect the retailer's [sic] occupation tax on non-prescription eyewear and issue a resale certificate and pay service occupation tax on the sale of prescription eyewear (generally 1% plus and [any] local taxes that apply to food, medicines and medical appliances). 86 Ill. Admin. Code 140.126(c)(3).

Under 86 Ill. Admin 130.120(h), sales to organizations which are organized exclusively for educational or charitable purposes are exempt from Retailers [sic] Occupation Tax. The Taxpayer holds and [sic] exemption certificate issued by the State of Illinois and qualifies for this provision.

Generally, when an exempt entity makes sales to the public, Illinois regulations provide that the seller must collect sales tax from its customers unless an exemption is provided. 86 Ill. Admin. Code 130.2005. One of these exceptions is non-competitive sales. While at first blush, this appears to be a competitive sale as the Taxpayer is selling the same items as for-profit businesses, the regulation allows the Department to consider further guidelines for the sales, including the nature of the item sold and the character of the particular sale, and the real, practical effect of punitive competition. 86 Ill. Admin. Code 13.2005(a)(3)(C).

We believe that the Taxpayer's transactions should not be considered competitive sales and that the Taxpayer should not be required to remit Service Occupation Tax on the transactions for the following reasons:

1. The Non-Competitive Sales provisions are located within the Retailer [sic] Occupation Tax rules and contemplate the sales of tangible personal property. Illinois rules clearly categorize this transaction as a Service Occupation Tax transaction.
2. Under the Service Occupation Tax, the serviceman is deemed the taxable user of the tangible personal property transferred. The Taxpayer is entitled to purchase these items exempt from tax through an exemption certificate granted by the state.
3. The items being transferred are being used for both an educational and charitable purposes. [sic] The prescriptions and fitting of glasses serve an educational purpose. The recipients of the glasses, the patients of the Taxpayer, are largely indigent members of the community relying on state and federal aid to receive the glasses or contact lenses.
4. Even under the non-competitive sales rules, the Department may consider the nature of the transaction. As stated above, while the glasses transferred are the same type of product that for-profit businesses provide, the nature of the customers suggests that they may be priced out of the retail market for these services and that the Taxpayer is providing a service that alleviates some of the demand for services on the local, state and federal government as contemplated in the *Hospira* decision.
5. The Taxpayer is registered and files ST-1 returns and collects and remits Retailers [sic] Occupation Tax on its sales of non-prescription eyewear. The requirement to remit Service Occupation Tax would not result in a great deal of additional revenue to the state (less than \$X,XXX) but would detract from the educational and charitable function of the Taxpayer.

We respectfully submit that the Illinois Department of Revenue issue the requested ruling with the taxpayer information redacted. We further request that if the Department concludes contrary to the request that the Taxpayer be allowed to withdraw the ruling request. We are happy to provide any additional information or answer any questions

the Department has. Please contact me if there are any questions. A Power of Attorney has been submitted to the POA unit.

DEPARTMENT'S RESPONSE:

Section 2 of the Service Occupation Tax Act excludes the sale or transfer of tangible personal property as an incident to the rendering of service for or by certain organizations such as those that are organized and operated exclusively for educational purposes. 35 ILCS 115/2. We believe that the provision of ophthalmic examinations and the provision of prescription eyeglasses as part of the College's educational curriculum falls within the performance of its educational function. The transfer of tangible personal property incident to the providing of optometry services by the STATE College is not subject to tax because the training of students to provide such services is part of the College's primary educational purpose. The College would not incur either Retailers' Occupation Tax or Service Occupation Tax liability on the transfer of prescription eyeglasses and contact lenses incident to the provision of optometry services. The College may purchase the prescription eyeglasses and contact lenses, or the components for prescription eyeglasses, tax-free by providing vendors with its exemption identification number.

However, the sale by the College of items that are not transferred incident to the provision of optometry services would be subject to Retailers' Occupation Tax liability. The items subject to tax would include such items as sunglasses, cleaning solutions for lenses, eyeglass cases, or any other tangible personal property that is sold apart from the rendering of optometry services. These items may be purchased by the College without incurring tax by providing its suppliers with a Certificate of Resale. See 86 Ill. Adm. Code 130.1405.

Note, in your letter you state, in part, that "[u]nder the Service Occupation Tax, the serviceman is deemed the taxable user of the tangible personal property transferred." Generally, that statement is only true for certain servicemen (e.g., the de minimis serviceman incurring Use Tax liability is considered to be the end user of the tangible personal property transferred to service customers). See, 86 Ill. Adm. Code 140.108.

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
Chairman, Private Letter Ruling Committee

RSW/DMB:rkn