

Persons engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their receipts from those sales. See 86 Ill. Adm. Code 130.2145. (This is a GIL.)

October 13, 2022

NAME/ADDRESS

Dear Mr. XXX:

This letter is in response to your e-mail dated February 8, 2022, 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:

To Whom It May Concern,

I spoke with a Dept of Revenue person this morning regarding our business, COMPANY EIN ##-#####. We are going to be hosting a murder mystery dinner for which we will sell tickets that include the show and a buffet style dinner. All beverages would be purchased separately by the patrons. The restaurant that would cater in the food has given us an estimate that would charge us sales tax on the sale of the food.

The question is, do we have to have the food vendor remove the tax and then we would collect tax on the ticket? Or do we treat the entire show and dinner as a "service" since we would have already paid the tax on the food to the food vendor?

Thank you.

NAME
COMPANY

###-###-####

DEPARTMENT'S RESPONSE:

The Illinois 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. In Illinois, 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.

Persons engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their receipts from those sales. Caterers are considered vendors of tangible personal property under 86 Ill. Adm Code 130.2145. When caterers sell food or beverages to consumers, they incur a Retailers' Occupation Tax liability on their 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 the caterer's sale of food. Such costs would include charges for linens, tables, chairs, dishes, glasses, flowers, labor, set-up, and delivery. Each of these items is a part of the cost of doing business as a caterer. It is immaterial that the customer is separately billed for the price of these items. These costs are 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 (singers, bands, and the like).

However, the sale of tangible personal property to a purchaser for the purpose of resale is not subject to Retailers' Occupation Tax. Such sales cannot be made tax-free unless the purchaser has an active registration number or active resale number from the Department and gives such number to suppliers at the time of purchase. See 86 Ill. Adm. Code 130.210. Failure to present an active registration or resale number and a certification to the seller that the sale is for resale creates the presumption that the sale is not for resale. See 86. Ill. Adm. Code 130.1405.

When a transaction involves both a sale of tangible good and providing a service, the test for determining the actual nature of the transaction is proportion. If the taxpayer's business is the sale of food for which entertainment is only as an inducement for customers to dine, then a retailers' tax is assessed. See *Dinner Theatre Assoc. v. Ill. Dept. of Rev.*, 139 Ill. App. 3d 911 (3d Dist. 1985).

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When a single charge is made for both entertainment and food and the charge for food is not separately stated on the customer's bill, the entire charge is subject to tax. For example, when a dinner theater charges \$50 for a show and includes food and beverages, the entire \$50 is subject to tax unless a separate charge is made for the food and beverages. See 86 Ill. Adm. Code 130.2145.

Based on the limited information provided, a sale may be exempt from Retailers' Occupation Tax and Use Tax if the purchaser provides the seller a certificate of resale at the time of the sale. If a person is in the business of selling tangible personal property at retail and sells tickets for dinner and entertainment as an inducement for customers to patronize the person's business, then Retailers' Occupation Tax should be assessed on the dinner. Additionally, how the dinner and entertainment prices are listed on the tickets will determine the amount of the retailers' tax liability.

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,

Kimberly Rossini
Associate Counsel

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