

ST 24-0010-GIL 03/12/2024 RETAILERS' OCCUPATION TAX

This letter discusses discounts and coupons. See 86 Ill. Adm. Code 130.2125. (This is a GIL.)

COMPANY
NAME
ADDRESS

Dear Xxxx:

This letter is in response to your letter received February 5, 2024, 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 <https://tax.illinois.gov/> to review regulations, letter rulings and other types of information relevant to your inquiry.

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 must deny your request for a PLR. A private letter ruling will not be issued if, at the time the ruling is requested, the identical issue is involved in the taxpayer’s return for an earlier period and that issue is being examined as a part of a Department audit or is pending in litigation in a case involving the taxpayer or a related taxpayer in which the Department is named as a plaintiff or defendant. 2 Ill. Adm. Code 1200.110(a)(3)(C). The Department has decided to issue a general information letter. In your letter you have stated and made inquiry as follows:

I hope this letter finds you well. My name is NAMEn, and I am the owner of COMPANY. In light of our recent sales tax audit for the past couple years, which is nearing completion, I seek Private Letter Ruling from the Department to address specific inquiries related to the application of statutes to our particular fact situation.

Pursuant to Section 1200.110 of the Private Letter Rulings regulations, I am submitting this request behalf of COMPANY. Please consider the following details and questions:

1. Radio Promotions

Customers paid \$12 for a \$25 Gift Certificate from the RADIO STATION website.

When used at our restaurant, the Gift Certificate covers part or the entire bill.

Example:

A. Chicken Dinner \$20, after tax \$22.15, paid with a \$25 Gift Certificate.

B. Chicken Dinner + Steak Dinner, \$45 total, after tax \$49.84, paid with a \$25 Gift Certificate and \$24.84 cash/credit card.

The Radio Station will keep all the \$12 payments from all the customers as we pay them for running names on the radio. Our question is how to accurately record these transactions in sales, and if the entire bill is considered a sale, should the \$22.15 (A.) and \$25 (B.) be categorize as advertising costs?

2. Third-Party Website Deals:

Similar to radio promotions, customers pay \$12 for a \$25 Gift Certificate. They receive a QR code via email, which is scanned and used as part of their payment. And will get processed the same as in the first scenario.

We receive \$6 from these transactions, and third parties send us a 1099 at the year-end. We add those 1099s as extra income on the tax return. Our question mirrors the first scenario regarding recording and categorizing these transactions.

3. Discount Coupons:

Various discounts offered through mail, magazines, or different sources.

Example: \$10 OFF on \$60, \$25 OFF on \$150, Buy one meal get another for half price, etc.

Auditor suggested calculating tax before the discount, but we've observed a different approach establishments like COMPANY1.

Example:

Chicken Dinner \$20, after tax \$44.3, with a discount, the price is \$30.

A. In the auditor's method, tax remains \$4.3.

B. In COMPANY1 method, tax would be \$3.23.

We are seeking clarification on the correct way to calculate tax in such scenarios, and if in auditor's method (A.), should the discounts be considered as advertising costs? *(When I bought breakfast sandwich from COMPANY1, they sometime have deals like buy one get one for \$1, let's say the original price for one is \$4, if tax counted before discount will be \$0.86, but in a matter fact I only paid \$\$5.54 for the total of two sandwiches, tax is \$0.54)*

We kindly request the Department's guidance on these matters. Your assistance will be instrumental our future sales tax compliance.

DEPARTMENT'S RESPONSE:

A retailer incurs Retailers' Occupation Tax on its gross receipts from sales, which is defined as the total selling price of a sale. Under Section 1 of the Retailers' Occupation Tax, "selling price" means the consideration for a sale valued in money, whether received in money or otherwise, including cash, credits, property, other than as provided in the statutory definition, and services. 35 ILCS 120/1. The source of the consideration received by a retailer is immaterial in determining the gross receipts subject to tax. See *Ogden Chrysler Plymouth, Inc. v. Bower*, 348 Ill. App. 3d 944 (2004). Also see 86 Ill. Adm. Code 130.2125(a).

Use Tax is generally imposed on the selling price of tangible personal property purchased at retail. The Retailers' Occupation Tax Act and the Use Tax Act work together in a complementary manner. Whether discount coupons utilized by a purchaser for the purchase of tangible personal property constitute consideration for a sale depends upon whether the retailer receives any reimbursement for the amount of the discount. If the retailer receives full or partial reimbursement for the amount of the discount, the amount of the discount that is reimbursed is considered to be part of the selling price of the sale. The purchaser incurs tax on the entire selling price, including the amount of the discount paid to the retailer by the issuer of the coupon. 86 Ill. Adm. Code 130.2125(a).

For example, if a retailer sells an item for \$10 and the purchaser provides the retailer with a \$1 in-store coupon for which the retailer receives no reimbursement from the manufacturer of the item or any other source, the retailer's gross receipts of \$9 are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2125(b)(1). In another example, if a retailer lists an item for sale for \$15 and the purchaser provides the retailer with a \$5 manufacturer's coupon for which the retailer receives full reimbursement from the manufacturer of the item, the retailer's gross receipts are the \$10 received from the customer and the \$5 received from the manufacturer for a total of \$15 that is subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2125(b)(2).

When a retailer issues a coupon to a purchaser which entitles the purchaser to a free item conditioned on the purchase of a separate item (two-for-one, buy one get one free, etc.), the retailer's gross receipts are measured only by the amount actually received from the purchaser for both items. Thus, tax is only incurred on the amount actually received from the purchaser. The retailer does not incur tax based upon the value of the free item received because technically the item was not free, and no gift was intended. The retailer was simply offering a special price

for both items sold. Likewise, if a retailer provides a customer with a card, coupon, or other certificate later to be used to reduce (“discount”) the purchase price of an item or items and the retailer is not to be reimbursed for that discount from a manufacturer or any other source, the amount representing that discount would not be subject to Retailers’ Occupation Tax liability. See generally 86 Ill. Adm. Code 130.2125(b)(1).

Persons who are engaged in the business of selling cards or coupons, which entitle purchasers to the right to redeem those cards for tangible personal property, are not engaged in selling tangible personal property. Rather, they are making sales of intangibles. Such sales are not subject to the Retailers’ Occupation Tax. However, when those cards or coupons are redeemed for tangible personal property, retailers transferring tangible personal property incur Retailers’ Occupation Tax liability based on their gross receipts from sales. If a retailer accepts a gift card, the presumption is that the retailer received gross receipts equal to the face value of the gift card, absent other evidence.

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

RSW:sce