

ST 25-0004-PLR 07/17/2025 GROSS RECEIPTS

If a retailer receives a reimbursement tied to an individual sale, the amount of that reimbursement is considered part of the gross receipts received by the seller and is subject to Retailers' Occupation Tax. A reimbursement payment to a retailer that is not related to an individual sale is not considered part of gross receipts. *Chet's Vending Service Inc. v. Department of Revenue*, 71 Ill. 2d 38 (1978).

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NAME
COMPANY
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your letter dated May 16, 2025, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY1 for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY1, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

We represent COMPANY1, which is duly authorized to transact business in Illinois ("Taxpayer"). We are submitting a private letter ruling request on behalf of Taxpayer, pursuant to Illinois Administrative Code Section [sic] 2 § 1200.110, for a determination whether subsidies paid by an employer to a

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third-party food service provider under a contractual agreement relating to the operation of an employer provided cafeteria is subject to Illinois's Retailers' Occupation Tax.

ISSUE

The issue is whether, under Illinois's sales and use tax, Taxpayer is required to collect and remit Retailers' Occupation Tax on the subsidies it receives from employers as part of a contractual agreement whereby Taxpayer operates the employer's cafeteria and sells food and drink to the employer's employees.

FACTS

The Taxpayer is based in New York and is duly authorized to transact business in Illinois. Taxpayer is a third-party food service provider and has entered into various operating agreements with employers, each owning a cafeteria or similar facility, (a) for providing meal and beverage services on the employer's premises to employees, and (b) for providing other services and supplies. Pursuant to Illinois Compiled Statutes ("ILCS") 35 ILCS 120/1 *et seq.*, Taxpayer charges Retailers' Occupation Tax for furnishing, preparing, and serving food, meals, and drinks to its employer-client's employees as well as on the subsidies it receives from the employers for costs associated with operating each employer's cafeteria in Illinois.

Pursuant to the operating agreement with the Taxpayer, the employer provides the physical plant and equipment, including all fixtures, tables, chairs, equipment, silverware, chinaware, glassware, linens, kitchen utensils and all other fixed and movable equipment and facilities necessary to the efficient operation, transportation, and control of food service. Taxpayer and each employer work together in determining operating policies, including wage scales, selling price of food, size of portions, quality of food, recipes, and menus. However, the employer's decision would prevail in any dispute involving the aforementioned. The prices of all food items sold to employees are always established by the employer and the prices are generally in substantial relation to and always exceed cost.

The Taxpayer hires and supervises all cafeteria employees. The Taxpayer also purchases, prepares and serves all food, and provides various bookkeeping, housekeeping, and administrative services to each employer.

At the end of the period, the Taxpayer is entitled to receive a fixed administration fee, plus reimbursement of the cost of conducting business,

less receipts from sales of meals to the employees. The cost of conducting business consists of the following: (i) the cost of all labor employed by the Taxpayer, including payroll taxes and workmen's compensation; (ii) the cost of all food supplies and other materials and supplies, including sales taxes, delivery charges, etc.; and (iii) the cost of all supervision expenses. If, during any accounting period, the gross receipts received from the employees for cafeteria sales exceed the cost of conducting business, the Taxpayer is required to pay the excess to the employer. If, however, the gross receipts received from the employees for cafeteria sales are less than the agreed upon contract price between the Taxpayer and the employer, the employer is contractually obligated to pay the difference to the Taxpayer. This difference paid to the Taxpayer is referred to as the employer subsidy.

The employer subsidy is not paid at the time of the food and drink purchase and is not based upon individual sales of food and drink. Only after the end of the accounting period is the amount of the subsidy calculated to comply with the terms of the agreement on the amount that the employer is required to pay the Taxpayer. The result of the employer subsidy is that the Taxpayer generally does not have the full risk of loss in connection with the operations of the employer's cafeteria. The payment of the employer subsidy results in a guarantee payment by the employer to the Taxpayer.

RELEVANT LAW

Retailers' Occupation Tax is imposed on persons engaged in the business of selling tangible personal property to buyers for use or consumption and is measured by the seller's gross receipts from such sales made in the course of the seller's business. 35 ILCS 120/2; Ill. Admin. Code 86 § 130.101. Sales of tangible personal property, including food, are generally presumed taxable, unless specifically exempted from taxation. *Id.*

A "sale at retail" means "any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or byproduct of manufacturing. For this purpose, slag produced as an incident to manufacturing pig iron or steel and sold is considered to be an intentionally produced byproduct of manufacturing. Transactions whereby the possession

of the property is transferred but the seller retains the title as security for payment of the selling price shall be deemed to be sales." 35 ILCS 120/1.

"Food" is any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. Ill. Adm in. Code 86 § 130.310(c)(1).

"Premises" is that area over which the retailer exercises control, whether by lease, contract, license or otherwise, and, in addition, the area in which facilities for eating are provided, including areas designated for, or devoted to, use in conjunction with the business engaged in by the vendor. Vendor premises include eating areas provided by employers for employees and common or shared eating areas in shopping centers or public buildings if customers of food vendors adjacent to those areas are permitted to use them for consumption of food products. Ill. Admin. Code 86 § 130.310(c)(3).

Food for human consumption to be consumed off the premises where it is sold (other than alcoholic beverages, food consisting of or infused with adult use cannabis, soft drinks, candy, and food that has been prepared for immediate consumption) is taxable at the reduced 1%. 35 ILCS § 120/2-10. "Food prepared for immediate consumption" is taxed at the 6.25% state sales and use tax rate." 35 ILCS 120/2-10.

Food prepared for immediate consumption means food that is prepared or made ready by a retailer to be eaten without substantial delay after the final stage of preparation by the retailer. This includes, but is not limited to, the following: (1) all hot foods, whether sold in a restaurant, delicatessen, grocery store, discount store, concession stand, bowling alley, vending machine or any other location. At a grocery store, hot foods subject to the high rate of tax include, but are not limited to, pizza, soup, rotisserie or fried chicken and coffee; other examples of food prepared for immediate consumption include popcorn or nachos sold at a movie concession stand; hot dogs sold by a street vendor; and hot precooked meals sold to customers, such as a Thanksgiving dinner. For these purposes, "hot" means any temperature that is greater than room temperature; (2) sandwiches, either hot or cold, prepared by a retailer to the individual order of a customer; [sic] salad, olive or sushi bars offered by a retailer at which individuals prepare their own salads (hot or cold); (3) all coffee, tea, cappuccino and other drinks prepared by a retailer for individual consumption, (4) [sic] whether hot or cold, are subject to the high rate of tax; and (5) all food sold for consumption on the premises where sold. Ill. Admin. Code 86 § 130.310(c)(2)(A).

"Food prepared for immediate consumption" does not include: (1) doughnuts, cookies, bagels or other bakery items prepared by a retailer and sold either individually or in another quantity selected by the customer, provided they are for consumption off the premises where sold; (2) whole breads, pies and cakes prepared by a retailer, even when prepared to the individual order of a customer; (3) sandwiches that are prepared by a retailer and placed in a deli case or other storage unit; cold salads, jellios, stuffed vegetables or fruits sold by weight or by quart, pint or other quantity by a retailer; (4) cheese, fruit, vegetable or meat trays prepared by a retailer, either to the individual order of a customer or premade and set out for sale; (5) food items sold by a retailer that are not prepared or otherwise manufactured by that retailer, such as pre-packaged snacks or chips, unless these items will be consumed on the premises where sold (e.g., in a sandwich shop). For grocers, such items include, but are not limited to, fruits, vegetables, meats, milk, canned goods and yogurt. In addition, all sales of "candy" are subject to the high rate of tax. Ill. Admin. Code 86 § 130.310(c)(2)(B).

If retailers provide seating or facilities for on-premises consumption of food, all food sales are presumed to be taxable at the high rate as "food prepared for immediate consumption." However, this presumption can be rebutted by evidence that: (A) the area for on-premises consumption is physically separated or otherwise distinguishable from the area where food not for immediate consumption is sold; and (B) the retailer utilizes a means of recording and accounting for collection of receipts from the sales of food prepared for immediate consumption (high rate) and the sales of food that are not prepared for immediate consumption (low rate). Ill. Admin. Code 86 § 130.310(d)(1).

If a retailer does not provide seating or facilities for on-premises consumption of food, then the low rate of tax will be applied to all food items except for "food prepared for immediate consumption by the retailer" and soft drinks, candy and alcoholic beverages. However, in order for the low rate of tax to apply, retailers that sell both food prepared for immediate consumption and food for consumption off the premises where sold must utilize means of recording and accounting for collection of receipts from the sales of food prepared for immediate consumption (high rate) and the sales of food that are not prepared for immediate consumption (low rate). If these receipts are not maintained, all sales will be presumed to be at the high rate of tax. Ill. Admin. Code 86 § 130.310(d)(2).

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Though Illinois statutes do not specifically address the issue of whether subsidies paid to food service providers to operate employer-provided cafeterias are subject to Retailers' Occupation Tax, one older Illinois case implies such payments would not be subject to the tax. In *Chet's Vending Service, Inc.*, the Supreme Court of Illinois held certain payments by an employer to the operator of an employee cafeteria were not includable in the operator's gross receipts because they were not part of a recognized taxable exchange of tangible personal property for consideration. *Chet's Vending Service, Inc. v. Department of Revenue*, 374 N.E.2d 468 (Ill. 1978). While this case may be similar, there are differing facts, and therefore it might not be entirely dispositive on Taxpayer's request, so Taxpayer is requesting this ruling. It is important to note, there have been decisions in other jurisdictions that have reached a similar conclusion, which was noted by the Illinois Supreme Court in *Chet's Vending Service, Inc.* In Missouri, for example, an administrative appeals commission found that subsidies paid by employers to third-party food service providers were not subject to Missouri sales tax because they were not paid by a purchaser at the time of sale, and thus did not constitute gross receipts.

This letter is a request for clarification by the Illinois Department of Revenue on how the Taxpayer is to treat the subsidies it receives from employers pursuant to a contractual agreement between the Taxpayer and Illinois employers.

QUESTION REGARDING OUR REQUEST FOR GUIDANCE

1. Are the subsidies that employers pay to the Taxpayer as part of a contractual arrangement to maintain and operate the employer's cafeteria subject to Retailers' Occupation Tax in Illinois?

REQUIREMENTS PURSUANT TO ILL. ADMIN. CODE 2 § 1200.110

Below are the general rules and prohibitions regarding the issuance of private letter rulings in Illinois and Taxpayer's response [to] same:

1. **A request for a private letter ruling must be made by, or on behalf of, an identified taxpayer. A request for ruling may be made by a taxpayer, or by a taxpayer's representative under a power of attorney from that taxpayer. The Department will not issue letter rulings to taxpayer representatives for anonymous or unidentified taxpayers. The relevant statutes and regulations have been sufficiently stated above. This requirement is satisfied.**

Taxpayer has identified itself as COMPANY1.

2. Taxpayers must make separate requests for ruling by tax type.

Taxpayer is only requesting a ruling for one tax type. This requirement is satisfied.

3. A private letter ruling will not be issued on alternative plans of proposed transactions or hypothetical situations.

This is an actual fact pattern and is not hypothetical. This requirement is satisfied.

4. A private letter ruling on behalf of multiple taxpayers will generally not be issued.

This private letter ruling is only on behalf of one taxpayer. This requirement is satisfied.

5. Private letter rulings will not be issued to business, trade, industrial associations or to similar groups concerning the application of tax laws to members of the groups.

This private letter ruling is being requested by an interested taxpayer and not as part of an association, membership, group, or other third party. This requirement is satisfied.

6. 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.

This issue is not being examined by the Illinois Department of Revenue as part of an audit. This requirement is satisfied.

7. If there is case law or there are regulations dispositive of the subject of the request, the Department will decline to issue a private letter ruling on the subject.

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Taxpayer addresses this issue previously. Taxpayer believes Chet's Vending Service, Inc. v. Department of Revenue is similar but not identical in facts and would therefore not necessarily be controlling or dispositive authority in this matter. This requirement is satisfied.

If the applying taxpayer satisfies these requirements, the following information must also be provided:

1. The request must contain a complete statement of all material facts.

Taxpayer has included a complete statement of facts. This requirement is satisfied.

2. All contracts, licenses, agreements, instruments or other documents relevant to the request.

The relevant documentation has been included as part of this request. This requirement is satisfied.

3. An identification of the tax period at issue, and disclosure of whether an audit or litigation is pending with the Department of Revenue.

The relevant tax period is calendar year 2023. Taxpayer is unaware of any pending audit or litigation with the Department of Revenue. This requirement is satisfied.

4. A statement that to the best of the knowledge of both the taxpayer and the taxpayer's representative the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, or whether the taxpayer or any representatives previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

"To the best of the knowledge of both Taxpayer and Taxpayer's representative the Department of Revenue has not previously ruled on the same or a similar issue for the Taxpayer or a predecessor, or whether the Taxpayer or any representatives previously submitted the same or a similar issue to the Department of Revenue but withdrew it before a letter ruling was issued." This requirement is satisfied.

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5. A statement of authorities supporting the taxpayer's views, an explanation of the grounds for that conclusion and the relevant authorities to support that conclusion.

Taxpayer outlined its authorities and explained them accordingly in the "Relevant Law" section. This requirement is satisfied.

6. A statement of authorities contrary to the taxpayer's views.

Taxpayer did not find any authorities that suggest such subsidies are subject to Retailers' Occupation Tax. This requirement is satisfied.

7. An identification of any specific trade secret information taxpayer requests be deleted from the publicly disseminated version of the private letter ruling.

Taxpayer does not have any trade secret information included in this request. This requirement is satisfied.

8. The signature of the taxpayer or the taxpayer's representative. A taxpayer's representative must also provide a properly executed power of attorney.

A properly executed power of attorney is included in this request. This requirement is satisfied.

CONCLUSION

Taxpayer believes it satisfies all the requirements to obtain a private letter ruling pursuant to Ill. Admin. Code 2 § 1200.110. Should you need additional information regarding this request or if you would like to discuss this matter further, please contact me by phone at PHONE or email at EMAIL at your earliest convenience.

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 to purchasers for use or consumption. See 35 ILCS 120/2; 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes

comprise what is commonly known as “sales” tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers’ Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

Under Section 1 of the Retailers’ Occupation Tax Act, “Gross receipts” from the sales of tangible personal property at retail means the total selling price or the amount of such sales. 35 ILCS 120/1. The Department, in its own administrative rules, has further clarified the definition of “gross receipts” as all the consideration actually received by the seller, except traded-in tangible personal property. 86 Ill. Adm. Code 130.401. The consideration received by the seller is not limited to a single source, and the consideration does not have to be paid solely by the purchaser. See generally *Ogden Chrysler Plymouth, Inc. v. Bower*, 348 Ill.App.3d 944 (2004). However, consideration received by the seller from one or more parties must be tied to a particular sale.

In *Chet’s Vending Service Inc. v. Department of Revenue*, 71 Ill. 2d 38 (1978), the court reviewed whether the “fixed fee” monthly subsidy payments or the “guarantee” payments made by an employer to a caterer making food and beverage sales to the employer’s employees were subject to Retailers’ Occupation Tax. The Department argued that the payments by the employer “represent[ed] a ‘two-party split’ of the consideration for the transfer of tangible personal property between the employer and employee and that the payments received from both must be combined in computing the retailers’ occupation tax.” *Id.* at 42. The court, however, disagreed.

The evidence shows no basis for relating any portion of the fixed fee or guarantee payment to any individual sale as part of the “selling price.” To construe the terms “selling price” and “gross receipts” in the manner for which [the Department] contends would require us to hold that the manual or cafeteria-type sales at each industrial location during a calendar month were one sale to both the employer and the employees, the “selling price” of which was the aggregate of the sums received from the employees and the monthly payment received from the employer. . . . We have considered the arguments of the parties concerning the nature of the payments and conclude that whether the payments were made for the purpose of enabling plaintiff to reduce the cost of the food and beverages which it sells to the employees or to guarantee it a profit from its operation is wholly irrelevant. Under the clearly defined terms employed in the statute, the payments were not includable in plaintiff’s “gross receipts.”

Id. at 42-43. The test enunciated by the court is whether there is any basis for “relating” any portion of the third-party payment to any individual sale.

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In applying this test to the employer subsidy payments described in your letter, the Department has determined that such subsidy payments are not related to individual sales of tangible personal property. Therefore, such subsidy payments are not includable in gross receipts subject to Retailers' Occupation Tax or Use Tax.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 524-0034. If you have further questions related to the Illinois sales tax laws, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at (800) 732-8866.

Very truly yours,

Samuel J. Moore
Chairman, Private Letter Ruling Committee

SJM:GLE