

Gross receipts from the sale of newspapers and magazines in Illinois are not subject to sales tax. 86 Ill. Adm. Code Section 130.2105. (This is a GIL.)

July 3, 2025

NAME
COMPANY1
ADDRESS

Dear NAME:

This letter is in response to your letter dated February 27, 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.

Whether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. 2 Ill. Adm. Code 1200.110(a)(4). 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. 2 Ill. Adm. Code 1200.110(a)(3)(D). Having reviewed your request, the Department notes that there are laws and regulations dispositive of the subject of the request. Thus, the Department is declining to issue a private letter ruling in response to your request. However, 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:

On behalf of the above-named taxpayer, COMPANY2 ("Taxpayer"), request is respectfully requested for a Private Letter Ruling ("PLR") regarding the application of the Illinois Sales and Use tax to Taxpayer's business operations. The Tax Period at Issue is DATE1 through DATE2 and Taxpayer has no Sales

and Use Tax audit or litigation pending with the Illinois Department of Revenue. The important facts related to this request are outlined below.

FACTS AND DISCUSSION

Taxpayer has offices in CITY1, STATE1, CITY2, and CITY3 and has employees working remotely at locations throughout the United States, including five employees in the State of Illinois. Taxpayer has Illinois sales and use tax nexus.

Taxpayer provides marketing-related services to the travel industry. These services are provided to independently owned travel agency member clients ("Members") throughout the United States (including Illinois), Canada, Latin America, Europe, Asia and Australia and include promotional services delivered through periodicals published by Taxpayer. The Company's flagship magazine, is published every other month, complemented by Special Editions, which are supplements to the flagship publication. Travel themed catalogs are published monthly. The periodicals contain articles related to travel and information on travel packages. Members are responsible for mailing a minimum number of these publications each year to the clients of Members as a condition of membership. Taxpayer charges Members an annual membership fee, which includes the cost of the subscriptions each Member is responsible for mailing. These publications, which have some personalization related to each Member, are primarily mailed via the United States Postal Service directly from the printer to the clients of the Member travel agencies. Additional copies can be purchased by the Member travel agencies at the published price. The publications are also available by subscription to the public.

In addition to the services provided to the Members, Taxpayer provides marketing and advertising services to travel providers. Taxpayer's target market is the luxury traveler. Taxpayer maintains a database to track the Members' clients allowing direct marketing materials and publications to be mailed to the target market.

Taxpayer does not operate printing facilities internally, which makes it necessary to contract with a third party to print the publications and fliers. The outside printing contractor is located outside the state of Illinois, and the publications are mailed via the United States Postal Service from outside the State of Illinois.

Copies of the recent publications and direct marketing materials are enclosed. Also enclosed are examples of the Membership Agreement, Conditions of Membership, and Preferred Supplier Agreement.

ISSUES PRESENTED

- I. Are the amounts charged to Illinois travel agency Members for membership fees and publications subject to sales and use tax in Illinois?
- II. Are the amounts charged to travel providers for direct marketing materials which are sent to Members' clients located in Illinois subject to sales and use tax in Illinois?
- III. Alternatively, are Taxpayer or Taxpayer's customers subject to Illinois use tax on the cost of the publications sent to entities and individuals within Illinois? If so, what costs are subject to the tax?

RELEVANT AUTHORITIES AND SUPPORTING LEGAL INFORMATION

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in the State of Illinois in the business of selling tangible personal property to purchasers for use or consumption and the rules are provided for in 86 Ill. Adm. Code §130.101. Use Tax is imposed on the privilege of using, in the State of Illinois, any kind of tangible personal property that is purchased anywhere at retail from a retailer. Such rules are provided for in 86 Ill. Adm. Code §150.101.

Retailers' Occupation Tax and Use Tax do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services (i.e., servicemen) are taxed on tangible personal property transferred as an incident to sales of service, as provided for in 86 Ill. Adm. Code §140.101. The transfer of tangible personal property to service customers may result in either Service Occupation Tax liability or Use Tax liability for servicemen.

There are various exemptions from sales and use taxes.

Magazine Sales

One of the exemptions from the Illinois sales and use taxes are certain sales of magazines. Sales of magazines published at least twice per year are not subject to the retailers' occupation and use tax. Under Illinois Administrative Code, 86 Ill. Admin. Code §130.2105, the test that must be met for a publication to qualify as a magazine is that it must be published periodically in the form of newsprint and ink. Periodically means at least two times per year. The other factors to be considered are whether a member of the public can subscribe to the publication, whether the publication is one that has the

basic format of a magazine, including soft covers, individual pages and indexed articles, whether it contains articles and items that have value to the general public, and whether it contains general advertising. A publication that has one or more of these characteristics would be considered to be a magazine, assuming the initial test of periodic publication is met.

Sales of direct marketing materials

Direct mail advertising services typically involve the transfer of tangible personal property incident to the sale of those services. As explained above, tangible personal property that is transferred to the service customer may result in either service occupation tax liability or use tax liability for the servicemen depending upon the activities.

Under the Service Occupation Tax Act, businesses providing services are taxed on tangible personal property transferred as an incident to sales of service. Use tax will be imposed when a person exercises a right over tangible personal property in the State of Illinois, according to 86 Ill. Adm. Code §150.101

According to Illinois General Information Letters ST 04-0200-GIL, ST 01-0003-GIL, ST 01-0166-GIL, printed materials used outside of Illinois and then placed with a mail carrier also located outside Illinois for delivery into Illinois, which results in the serviceman losing the ability to exercise control over the printed materials after entry into Illinois, would not be subject to use tax or service use tax since the serviceman cannot exercise control of the materials in Illinois.

REQUEST FOR RULING

Taxpayer respectfully requests that the Department provide an analysis of the sales and use tax treatment of the transactions and issues described above, and requests the following rulings:

- I. The periodicals distributed to the Members' clients meet the definition of magazines and, thus, membership fees and other charges for publications are not subject to sales and use tax.
- II. The direct marketing materials sent into Illinois are produced, printed and mailed from outside the State of Illinois and thus are not subject to sales and use tax, since neither the Taxpayer nor its customers can exercise control of the materials in Illinois.
- III. Because the publications and printed materials are used outside of Illinois and then placed with the USPS also outside of Illinois, no use tax is due on the cost of the publications and printed materials by Taxpayer or its

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customers, since neither the Taxpayer nor its customers can exercise control of the materials in Illinois.

REQUIRED STATEMENTS

To the best of the knowledge of both the taxpayer and the taxpayer's representative, there are no authorities contrary to Taxpayer's views expressed above.

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. Furthermore, neither the taxpayer nor any representatives have previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

Prior to public dissemination of the PLR, please delete the name and address of the taxpayer and taxpayer's representative, office locations, and any confidential information and trade secret information.

Enclosed please find Form IL-2848, Power of Attorney. If you have any questions or need additional information, please do not hesitate to contact me.

DEPARTMENT'S RESPONSE:

Due to the complexity of your client's enterprise and the necessity for very specific facts, your questions cannot be addressed in the context of a General Information Letter. However, this letter will provide you with basic guidelines that may be used to determine whether your client engages in taxable transactions under Illinois law.

I. Retailers' Occupation Tax

The Illinois Retailers' Occupation Tax Act ("ROTA") imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 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. 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. 35 ILCS 105/3-45; 86 Ill. Adm. Code 150.401. 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. 86 Ill. Adm. Code 150.130(b). If the purchases occur outside

Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department. See 35 ILCS 105/3-45; 86 Ill. Adm. Code 150.701(a).

II. Service Occupation Tax

Retailers' Occupation Tax and Use Tax do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services (*i.e.*, servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The transfer of tangible personal property to service customers may result in either Service Occupation Tax liability or Use Tax liability for servicemen, depending upon which tax base they choose to calculate their liability.

Servicemen may calculate their tax base in one of four ways: (1) separately-stated selling price of tangible personal property transferred incident to service; (2) 50% of the serviceman's entire bill; (3) Service Occupation Tax on the serviceman's cost price if the serviceman is a registered de minimis serviceman; or (4) Use Tax on the serviceman's cost price if the serviceman is de minimis and is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code Sections 140.106; 140.108; and 140.109.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of sales of service. They are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They

remit tax to the Department by filing returns and do not pay tax to their suppliers. They provide suppliers with Certificates of Resale for the tangible personal property transferred to service customers. See 86 Ill. Adm. Code 140.109.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess, and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

III. Magazines and Marketing Materials

Sales of newspapers and magazines are not subject to the tax because of the newsprint and ink exemption pursuant to Section 1 of the ROTA. In determining whether a publication qualifies as a magazine for the purpose of the newsprint and ink exemption, there is one test that must be met and several other factors to be considered. The test for a publication to qualify as a magazine is that it must be published periodically in the form of newsprint and ink. Periodically means at least two times per year. The other factors to be considered are whether a member of the public can subscribe to the publication, whether the publication is one that has the basic format of a magazine, including soft covers, individual pages and indexed articles, whether it contains articles and items that have value to the general public, and whether it contains general advertising. A publication that has one or more of these characteristics would be considered to be a magazine, assuming the initial test of periodic publication is met. 86 Ill. Adm. Code 130.2105(a)(2).

Information or data that is downloaded electronically, such as downloaded magazines, does not constitute the transfer of tangible personal property. These types of transactions represent the transfer of intangibles and are thus not subject to retailers' occupation and use tax. 86 Ill. Adm. Code 130.2105(a)(2).

Similarly, the sale, employment and transfer of such tangible personal property as newsprint and ink for physical incorporation into newspapers or magazines is exempt from service occupation tax. 86 Ill. Adm. Code 140.125(i). The Department has also determined that a de minimis serviceman incurring a Use Tax liability may claim any of the exemptions, except as provided in Section 140.108(a)(2)(C), authorized under the Service Occupation

Tax Act. For instance, these exemptions include, newsprint and ink, and graphic arts machinery and equipment. 86 Ill. Adm. Code 140.108(a)(2)(B).

Advertising supplements that will not be distributed separately, but which will be distributed only as inserts in newspapers, are generally considered to be a part of the newspaper. If the advertising supplements are a part of the newspaper they qualify for the newsprint and ink exemption under the Retailers' Occupation Tax Act and the Service Occupation Tax Act. If advertising supplements are printed on special order and are distributed separately from newspapers (not as newspaper inserts), they will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. See discussion above regarding the Service Occupation Tax.

Generally, if a company publishes a magazine or catalog every other month or monthly and these periodicals contain articles on travel and information on travel packages, such magazines and catalogs would qualify for the newsprint and ink exemption, including any special editions to the magazine. Generally, individually mailed advertising fliers would not qualify for the newsprint and ink exemption.

IV. Membership Fees

Membership fees are not gross receipts from the sale of tangible personal property. Membership fees are gross receipts received in exchange for an intangible. For example, when membership fees "buy" purchasers the right to purchase products at wholesale, but are not applied to the purchase price of tangible personal property, they are not subject to sales tax. However, when membership fees represent the sale of tangible personal property, they are subject to tax. 86 Ill. Adm. Code 130.401(b). Also, if membership fees are part of a charge for a sale of service and tangible personal property is transferred incident to that service, those fees may be subject to service occupation tax depending upon the method the serviceman chooses to calculate his tax base. See 86 Ill. Adm. Code 140.101.

V. Multi-service situations.

When a serviceman contracts out all or a portion of the service that he will provide, it is acting as a primary serviceman in a multi-service situation. As a primary serviceman, it engages the services of a secondary serviceman to obtain all or part of the products and services desired by the service customer. Whether the primary and secondary servicemen are registered or de minimis will determine what type of tax will be incurred as well as who will incur the tax. Servicemen engaging in multi-service transactions are urged to utilize one of the methods described in subsection (a) or (c) of Section 140.145. Use of either of these methods prevents the likelihood of tax being incurred by both servicemen, as described in subsection (d) of Section 140.145. 86 Ill. Adm. Code 140.145(e). Depending on whether

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each of the servicemen are registered servicemen in Illinois, 86 Ill. Adm. Code 140.145(c) may apply, and certificates of resale may be given for purchases of services involving the transfer of tangible personal property which will be transferred incident to a subsequent sale of service.

In multi-service situations, in order for both the primary de minimis serviceman and the secondary de minimis serviceman to obtain any of the exemptions listed in Section 140.108(a)(2)(A) and (B), the primary de minimis serviceman should provide the secondary de minimis serviceman with the proper documentation certifying the exemption. 86 Ill. Adm. Code 140.108(a)(2)(E).

VI. Donor-donee situations.

Under the Illinois Use Tax Act, donors who purchase tangible personal property, such as advertising brochures or catalogs, and give it away in Illinois make a taxable use of the donated property. "Use" is defined as the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. 35 ILCS 105/2; 86 Ill. Adm. Code 150.201. The donee in a gift situation is not a taxable user, the donor who purchases the property and gives it away makes a taxable use of the property when making such gift. 86 Ill. Adm. Code 150.305(c).

If the donor's use occurs in Illinois, the donor incurs Use Tax liability or potentially Service Use Tax liability for custom printed materials. If the advertisements are mailed by U.S. Mail into Illinois from an out-of-State location, the donor, even though it is donating the advertising materials to Illinois recipients, has exercised no power or control over the property in Illinois. In this instance, the donor would not have made any taxable use of the property in Illinois. This tax analysis changes if the donor were to have any control over the property in Illinois. For example, if the donor were to have power of recall over the property once it entered Illinois, it could incur a Service Use Tax liability in Illinois.

When a printing company contracts to print custom printed marketing literature, a special order printing situation exists and the transaction is subject to tax under the Service Occupation Tax Act. Who is liable for the tax in these situations depends upon the method chosen by the printer in calculating its Service Occupation Tax liability. See 86 Ill. Adm. Code 130.2000 and 140.101.

I hope this information is helpful. If you have further questions concerning this General Information Letter, you may contact me at (217) 782-7055. 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.

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Very truly yours,

Katarzyna Kowalska
Associate Counsel

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