

Illinois Retailers' Occupation Tax is imposed upon gross receipts from the sale meals by caterers. See 86 Ill. Adm. Code 130.2145. (This is a GIL.)

April 16, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 17, 2009, in which you request 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:

This is a request for a private letter of ruling on behalf of COMPANY. An example of our standard billing is as follows:

Food	\$1,000.00
Beverage	\$1,000.00
Service	\$1,000.00
Equipment Rental	\$1,000.00
Linen Rental	<u>\$1,000.00</u>
Subtotal	<u>\$5,000.00</u>
11.25% Sales Tax	<u>\$ 562.50</u>
Total	<u>\$5,562.50</u>

It is our understanding that as a retailer of tangible personal property, we are required to charge sales tax on the total sale. However both equipment and linen rentals are subcontracted items on which are paid the lease tax required in the city of Chicago.

We request a private letter of ruling to state the following:

You are advised that any subcontracted rented tangible personal property on which the city of Chicago lease tax has already been paid is exempt from sales tax. Further, any

tangible personal property provided by you COMPANY to your customer that is not subcontracted is subject only to the city of Chicago lease tax and is exempt from sales tax.

Thank you for your assistance with this matter. We look forward to your reply.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. 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). Further, the Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject to the request, the Department will decline to issue a letter ruling on the subject." 86 Ill. Adm. Code 1200.110(a)(3)(D). The Department declines to issue a Private Letter Ruling since its regulations are dispositive of the subject of your request. Although we are not providing you with a Private Letter Ruling, we hope the following general information will be of assistance. For your information, the Department does not administer the City of Chicago's lease tax. As a result, the Department cannot speak to the taxability of items under that tax.

For general information purposes, the Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property for use or consumption. Persons that are engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their gross receipts from such sales. Such persons specifically include caterers. See 86 Ill. Adm. Code 130.2145, entitled "Vendors of Meals," which can be found on the Department's website.

Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. The term "selling price" is defined under the Retailers' Occupation Tax Act as the "consideration for a sale valued in money . . . and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever" See 35 ILCS 120/1. As indicated by this definition, a retailer's cost of doing business is not deductible from his gross receipts. This principle is also articulated in 86 Ill. Adm. Code 130.410. The regulation specifically states that in calculating Retailers' Occupation Tax liability, "freight or transportation costs . . . or any other expenses whatsoever" are not deductible from gross receipts.

As a result, tax is imposed upon a caterer's entire 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 his or her sale of food. Such costs would include charges for linens, tables, chairs, dishes, glasses, flowers, labor, set-up and delivery, and corkage fees. See 86 Ill. Adm. Code 130.2145(h). 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. See 86 Ill. Adm. Code 130.410. They are simply the 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. This would be the case, for instance, with charges for entertainment (singers, bands, and the like), valet, and coat check, etc. See 86 Ill. Adm. Code 130.2145(h).

Based on the information you provided, it appears that the charges are covered by the Department's regulation at 86 Ill. Adm. Code 130.2145, referred to herein.

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,

Debra M. Boggess
Associate Counsel

DMB:msk