

This letter references an earlier letter (ST 10-0017-GIL) regarding the Use Tax. 86 Ill. Adm. Code 150.305(c). (This is a GIL.)

August 11, 2010

Dear Xxxxx:

This letter is in response to your letter dated May 17, 2010, 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:

We are writing in reply to your letter of March 12, 2010. We respectfully suggest that your letter overlooks a critical point raised in our initial request.

Specifically, in our request, we pointed to section 3-65 of the Use Tax Act, which mandates that if the seller of an item would not be subject to retailers’ occupation tax on the sale of an item, then the in-state use of that same item is not subject to use tax. 35 ILCS 105/3-65; see *also*, 86 Ill. Adm Code §§ 150.101(c) and 150.301(b). In *First Chicago Building Corp. v. Department of Revenue*, 49 Ill. App. 3d 237 (1st Dist. 1977), the court ruled that under this provision, a company was not subject to use tax on materials purchased for use in the construction of a banking facility.

The bank at issue formed a new subsidiary to own, manage and develop the construction project. Since during the period under review, the retailers’ occupation tax did not apply to national banking associations, the bank purchased the building materials and resold them at a markup to its subsidiary. In turn, invoking section 3-65, the subsidiary did not pay use tax on its purchases because the seller—*i.e.*, its parent, a national bank, was not subject to the retailers’ occupation tax.

The Department argued that the section 3-65 exemption did not apply and issued a liability notice accordingly. The Department contended that the statute was intended to exempt from the use tax only certain types of transactions, such as isolated or

occasional sales. Noting that the plain language of section 3-65 controlled, the court rejected this contention because the Department's proposed construction would engraft onto the statute a condition or limitation not found in its text.

We submit that under the plain terms of section 3-65, as well as its interpretation in *First Chicago Building Corp.*, our client is not liable for tax as the user of the instruments. As noted in our initial request, insofar as the company would not be subject to retailers' occupation tax if it *sold* the instruments to nonprofit hospitals in Illinois, the company's *donation* of the instruments (*i.e.*, its 'use') to these same institutions is likewise not subject to the use tax.

We look forward to your confirmation of this conclusion. You may call me or my colleague with questions or comments.

DEPARTMENT'S RESPONSE:

The Department's regulations regarding use tax liability in donor/donee situations is well settled. See 86 Ill. Adm. Code 150.305(c) and 86 Ill. Adm. Code 130.2125(c). When a donor purchases tangible personal property and then gives it away, the donor has made a taxable use of the property by making such a gift. As such, it is the donor of the gift who is deemed the end user of the property and who is subject to the Use Tax, rather than the donee regardless of the type of entity to whom it was donated. Donor/donee situations in terms of use tax liability differ from sales to exempt organization in terms of retailers' occupation and use tax liabilities. As such, your belief that your client is not subject to use tax on the instruments it donates to nonprofit hospitals because if it sold the instruments to those hospitals, it would not be subject to retailers' occupation tax is misplaced.

However, we reviewed our previous response to you dated March 12, 2010 (ST 10-0017). It does not appear that anything has factually changed with your client's situation about which you inquired, and the law we set forth in our previous response has not changed. Accordingly, we decline to revise and/or clarify that response.

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

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