

If tangible personal property is transferred incident to sales of service, this will result in either Service Occupation tax liability or Use Tax liability for the serviceman depending upon his or her activities. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

December 22, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 29, 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 requesting a Ruling on what the taxable sales price is, for the transaction described herein. It applies to the period from 7/1/07 to date, as well as to current transactions.

In accordance with 2 Illinois Adm. Code 1200.110, we state that there is neither an audit nor litigation pending with the Illinois Department of Revenue. 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, nor has 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.

In the event you issue a ruling that is published or otherwise made known to the public, we request that you remove or modify any identifying characteristics of facts about the taxpayer or any of the other parties mentioned in our request.

Company Background:

COMPANY is the exclusive United States marketer of products manufactured by its sole parent and its subsidiaries. Corporate headquarters are located in CITY/STATE, where corporate and administrative functions are performed. COMPANY sells vehicles, parts and services to dealerships throughout the country and to independent distributors as

well. In addition, COMPANY markets certain services directly to retail consumers. In addition to selling vehicles, parts and services, COMPANY also provides marketing support to promote the brand, products and services. Such advertising and promotional efforts are aimed at auto dealers, the press, media outlets and consumers. Marketing campaigns are also conducted specifically for the purpose of building brand recognition, in an effort to associate the brand with certain activities and events.

Description of the Transactions in Question, PROGRAM – Taxable Sales Price:

COMPANY purchases a direct mail advertising program from a third-party vendor, BUSINESS, and re-sells [sic] it as the Program to the independent dealerships (these are customers of COMPANY) in Illinois that choose to participate in the program. The end products of this program are service reminders and service coupon mailers, direct mailed by BUSINESS to customers and prospective customers of the participating dealers. The objective of the mailers is to promote the dealership service business.

In order to participate in the program, each dealer must complete the “Dealer Enrollment Form” and agree to “Service and Confidentiality Agreement Terms” which are printed on the back of the enrollment form. BUSINESS provides detail to support their billing to COMPANY based on the type and volume of program activity for each of the dealers, and they also provide a data file for use by COMPANY in creating the two-part billing by COMPANY to their customers (dealers), as described below. The total amount of program fees billed to a customer represents the combined ‘billed costs’ (referenced in the agreement as the ‘total cost rate’), of the different parts of the program utilized for that customer during the month (for example: service reminder mailers, coupon mailers, mailer customization setup costs). For purposes of this inquiry, this will also be referred to as the ‘list price’. The arrangement, which applies to all dealers, is that the selling price will be discounted % from the ‘list price’. Reference the circled section on the attached sample agreement where the terms indicate that with the (occasional) exception of ‘optional data processing fees’, the program fees are billed by COMPANY to customers at % of the total cost rate (i.e. % of the ‘list price’). The terms also indicate that taxes are billed at 100% (meaning sales tax is charged on the ‘list price’). We feel that including this statement pertaining to taxes was an error on our part, and in fact it is the subject of this request a Private Taxpayer Ruling. It is our opinion that sales tax should be charged on the ‘discounted selling price’.

Every month COMPANY bills each of the participating customers for their monthly program fees. The monthly billing is done in two invoices. The first invoice is for 100% of the ‘program fees’, which is the established ‘list price’. The second invoice is a ‘discount coupon credit’ for % of the ‘program fees’ that are billed on the corresponding invoice. The ‘discount coupon credit’ is absorbed entirely by COMPANY, meaning COMPANY does not receive reimbursement for the coupon from a third-party. The invoices are generated on the same date, typically are two consecutive invoice numbers, and contain the same description. The invoice and its corresponding discount coupon credit are delivered to the customer together, and together they represent the discounted billing of the monthly program activity for the customer. The following example is provided for purposes of this inquiry:

Customer No.	100450	100450
Invoice No.	101	102
Invoice Date	12/1/09	12/1/09
Invoice Description	NOV PROGRAM	NOV PROGRAM
Invoice Amount before Tax	\$100.00	(\$.00)

(Discounted Selling Price = \$0.00)

Tax Rate	8.00%	8.00%
Tax Amount	\$8.00	(\$.00)

Please advise whether the correct taxable selling price is the \$100.00 'list price', or the \$.00 discounted amount.

Our opinion is that the taxable selling price is \$.00. The definitions of 'gross receipts' and 'selling price' exclude discounts, including coupons that are not reimbursed by a third party, and as such these coupons are considered a reduction of the selling price. The credits issued simultaneously by COMPANY with their corresponding invoices represent such coupons for which the retailer (COMPANY) does not have recourse to their supplier for reimbursement, and therefore should be deducted in arriving at the taxable discounted net selling price. This is based on our interpretation of the following statements contained in the tax code:

A sale of property for purposes of resale is exempt from ROT and UT. This exemption generally applies to the extent the property is not first used prior to its resale. 86 Ill. Adm. Code 130.210 ,

The ROT is based on 'gross receipts' from retail sales of tangible personal property. 86 Ill. Adm. Code 130.101(a)

"Gross receipts' means the total selling price or amount of retail sales. 86 Ill. Adm. Code 130.401

'Selling price' or the 'amount of sale' is defined as the consideration for a sale valued in money, including cash, credits, property, and services. The selling price is determined without deduction for the cost of the property sold, the cost of materials used, the labor or service cost, the freight or transportation costs, salesmen's commissions, interest paid by the seller, or any other expenses. However, the selling price does not include value given for traded-in property of 'like kind and character.'(35 ILCS 120/1)

If a retailer allows a purchaser a discount from the selling price on the basis of a discount coupon for which the retailer receives no reimbursement from any source, the amount of the discount is not subject to Retailers' Occupation Tax liability. Only the receipts actually received by the retailer from the purchaser, other than the value of the coupon, are subject to the tax. For example, if a retailer sells an item for \$10 and the purchaser provides the retailer with a \$1 instore [sic] 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 Retailer's [sic] Occupation Tax. (86 Ill. Adm. Code 130.2125(b)(1))

Further, in this example COMPANY's cost (as invoiced by BUSINESS to COMPANY) is approximately \$.00. Based on our review of the tax code there does not appear to be anything that indicates the below-cost, discounted sale would not be taxed based on the discounted retail selling price.

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). The Department declines to issue a Private Letter Ruling because, based on the information provided, the Department cannot determine the tax liability of the entities involved in the transaction. Although we are not providing you with a Private Letter Ruling, we hope the following general information will be of assistance.

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 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 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information, see 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Generally, under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. The liability of servicemen in these transactions may result in either Service Occupation Tax liability or Use Tax liability for servicemen depending upon which tax base the servicemen choose to calculate their tax 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 servicemen's entire bill; 3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or 4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

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. Under a second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, the servicemen must use 50% of the entire bill to service customers as the tax base. Both of the above stated methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for 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 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). 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. They remit the tax to the Department by filing returns and do

not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

De minimis servicemen that are not otherwise required to be registered under the Retailers Occupation Tax Act may use the final method of determining tax liability. 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 may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. The servicemen are not authorized to collect "tax" from their service customers nor are the servicemen liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction-by-transaction basis.

When a serviceman contracts out all or a portion of the service that he will provide, he is acting as a primary serviceman in a multi-service situation. As a primary serviceman, he engages the services of a secondary serviceman in order to obtain all or part of the product and services desired by the service customer. See 86 Ill. Adm. Code 140.145 to determine the tax incurred in these situations.

Although the Department, based on the limited information provided, cannot advise the proper method of imposing and collecting taxes by the various entities involved in the transaction, the Department can advise that there does not appear to be any Retailers' Occupation Tax liability on the program fees billed by the Company to its customers, the independent dealers.

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

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