

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.) See 86 Ill. Adm. Code . (This is a GIL.)

March 29, 2011

Dear Xxxxx:

This letter is in response to your letter dated January 20, 2011, 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](http://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:

In an effort to update and confirm the accuracy of our sales tax records, we are contacting you to obtain clarification/verification on the taxability of our revenue items. COMPANY is a tradeshow exhibit management company. We manage our clients' properties (i.e., their tradeshow exhibit) to and from shows, and the related services.

Enclosed please find the listing and description of our revenue items. Please provide the correct classification of each item as 'taxable' or 'non-taxable'. An electronic version of this is also available.

Please do not hesitate to contact me with any questions.

Thank you for your assistance in this matter.

Your enclosure reads as follows:

**Illinois – Classification of BSE Revenue Items as Taxable or Nontaxable**

Type	Item	Description	Taxable (T) or Nontaxable (N) in IL	Account
Service	Access Storage	Provide access storage during show hours.		4060 – Show Services Revenue
Service	Audio/Video			4060 – Show Services Revenue
Service	Carpet & Padding	Provide high quality carpet and ½” padding for complete exhibit floor space.		4005 – Construction Revenue
Service	Catering			4060 – Show Services Revenue
Service	Cleaning	Provide daily cleaning service including vacuuming and emptying of waste bins for the duration of the show. The first vacuuming will be the night before the show opens.		4060 – Show Services Revenue
Service	Construction	Construct		4005 – Construction Revenue
Service	Courier / Transportation			4020 – Freight Revenue
Service	Crating	Produce the following class A crate.		4005 Construction Revenue
Service	Design	Creative design and development of exhibit marketing environment. Including consultation, preliminary development and final presentation drawings.		4010 – Design Revenue
Service	Dismantle Labor	Provide dismantle labor according to the following schedule:..		4060 – Show Services Revenue
Service	Disposal			4005 – Construction Revenue
Service	Drayage Services	Coordinate drayage services for all exhibit properties. This includes final weight audit, and bill of lading completion.		4060 – Show Services Revenue
Service	Electrical Services	Provide the following electrical power and services including labor and materials:..		4060 – Show Services Revenue
Service	Engineering	Produce one (1) complete		5005 – Construction

		set of engineering drawings used for construction and installation on-site.		Cost of Goods Sold: 5008 –Project Management
Service	Expenses			4060- Show Services Revenue
Service	Floral	Provide the following floral to be rented for the duration of the show. This includes delivery and pick-up.		4060 – Show Services Revenue
Service	Freight	Shipping		4020 – Freight Revenue
Service	Freight From Show	Properties will ship from the show via Van Lines Carrier.		4020 – Freight Revenue
Service	Freight To Show	Properties will ship to show via Van Line carrier.		4020 – Freight Revenue
Service	Furniture			4060- Show Services Revenue
Service	Graphic Design			4010 – Design Revenue
Service	Graphics	Provide the following graphic elements, produced from client-supplied production-ready artwork.		4030 – Graphic Revenue
Service	Handling			4050 – Warehouse Revenue
Service	Handling In	Receive all exhibit properties into warehouse, inspect exterior for visual damage and place into storage.		4050 – Warehouse Revenue
Service	Handling In - Full	Receive in all exhibit properties, inspect exterior of all crates, open each crate and check contents for damages and completeness, re-pack crates and move to storage in warehouse. Produce a damage report if needed for customer review.		4050 – Warehouse Revenue
Service	Handling Out	Pull the following exhibit properties from storage and load out. Prepare shipping documents including shipping and packaging lists.		4050 – Warehouse Revenue
Service	Handling Out - Full	Pull all exhibit properties from storage, inspect exterior of all crates, open		4050 – Warehouse Revenue

		each crate and check contents for damages and completeness, re-pack crates and move to dock for shipping. Produce a damage report if needed for customer review.		
Service	Installation Labor	Provide installation labor according to the following schedule:		4060 – Show Services Revenue
Service	Internet Access	Provide		4060 – Show Services Revenue
Service	Labor			4060 – Show Services Revenue
Service	Lead Processing	Provide Lead Machines with disk option and paper roll.		4060 – Show Services Revenue
Service	Lighting			4060 – Show Services Revenue
Service	Materials	Provide show-site materials		4060 – Show Services Revenue
Service	Photography			4060 – Show Services Revenue
Service	Plumbing			4060 – Show Services Revenue
Service	PM – Warehousing			4050 – Warehouse Revenue
Service	Portable Booth			4005 – Construction Revenue
Service	Portables			4005 – Construction Revenue
Service	Preview	Provide a partial setup in our shop for pre-show viewing.		4005 – Construction Revenue
Service	Project Management	Coordinate and implement the related project purchases, services, and fabrication for this job. Maintain project timeline. Communicate to the project team members the project status and details. Maintain project quality control.		4005 – Construction Revenue
Service	Refurbish	Repair the following:		4005 – Construction Revenue
Service	Rental			4035 – Rental Revenue
Service	Rigging	Provide rigging crew with operator assistant according to the following		4060 – Show Services Revenue

		schedule to assist with overhead assemblies:		
Service	Security			4060 – Show Services Revenue
Service	Service Coordination	Coordinate all show service orders, -pre-payments, order forms, and post show audits.		4060 – Show Services Revenue
Service	Show Maintenance	Provide show maintenance labor according to the following schedule:..		4060 – Show Services Revenue
Service	Storage			4040 – Storage Revenue
Service	Supervision Labor	Supervision of installation and dismantle labor.		4060 – Show Services Revenue
Service	Telephone Service	Provide telephone lines as outlined below. Long distance and 800 calls will incur additional charges.		4060 – Show Services Revenue

## DEPARTMENT'S RESPONSE:

We are unable to respond in the format you requested. We hope the following information is helpful.

### Retailers' Occupation Tax Act

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. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. The retailer must pay Retailers' Occupation Tax to the Department based upon its gross receipts, or actual amount received, from the sale of the tangible personal property.

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 retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130

### Service Occupation Tax Act

Illinois Service 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. Services that involve the transfer of tangible personal property (such as, for example, written reports, other tangible media and training manuals) incident to a sale of service may be subject to either Service Occupation Tax liability or Use Tax liability.

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.

## Leases

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if a lessor is guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction. Persons who purchase items for resale under conditional sales contracts can avoid paying tax to suppliers by providing certificates of resale that contain all the information set forth in 86 Ill. Adm. Code 130.1405. All receipts received by a lessor/retailer under a conditional sales contract are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010.

A true lease generally has no buy out provision at the close of the lease. If a buy-out provision does exist, it must be a fair market value buy-out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property.

The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability. As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Under Illinois law, lessors may not "pass through" their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where the lessees agree to reimburse the lessors for the amount of the tax paid, then the lessees are obligated to fulfill the terms of the private contractual agreements.

## Telecommunications Excise Tax Act

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 35 ILCS Sections 630/3 and 630/4. Telecommunications retailers collect tax from end users and remit it to the Department. See 86 Ill. Adm. Code 495.140. "Telecommunications", in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. See 35 ILCS 630/2(c).

Interstate and intrastate telecommunications that originate or are received in this State are subject to Telecommunications Excise Tax. Interstate telecommunications means all telecommunications that either originate or terminate outside the State. This includes

telecommunications that originate or terminate outside of the United States. Consumers paying foreign taxes on telecommunications may take credit for such taxes in the same manner as taxes paid to other states. See 86 Ill. Adm. Code 495.115 and 495.130.

Retailers of telecommunications are persons who engage in the business of making sales of telecommunications at retail. 86 Ill. Adm. Code 495.110. "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration. The Telecommunications Excise Tax must be collected from a taxpayer by a "retailer maintaining a place of business in this State." The Department may, in its discretion, upon application, authorize the collection of the tax by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for telecommunications in this State in the same manner and subject to the same requirements as a retailer maintaining a place of business within this State. The permit may be revoked by the Department at its discretion. 35 ILCS 630/2(I).

The Internet Tax Freedom Act imposes a federal moratorium on state or municipal taxes on Internet access until November 1, 2014. 47 USCA § 151 note; § 1101. "Internet access":

- (A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;
- (B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold-
  - (i) to provide such service; or
  - (ii) to otherwise enable users to access content, information or other services offered over the Internet;
- (C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;
- (D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and
- (E) includes a homepage, electronic mail and instant messaging (including voice and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access.

Telecommunications that are purchased, used or sold by a provider *to enable users to connect to the Internet or to otherwise enable users to access content, information or other services offered over the Internet* are subject to the federal moratorium. Thus, not all telecommunications are subject to the moratorium. In addition, paragraph D of the definition of "Internet access" excludes "voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E)." Therefore, telecommunications, including for example Voice over Internet Protocol (VoIP), that are not



purchased, used or sold to a provider to enable users to connect to the Internet or to otherwise enable users to access content, information or other services offered over the Internet, are not subject to the federal moratorium and are subject to the Telecommunications Excise Tax.

Generally, charges for chat line services, other than the charges for transmission, are not subject to Telecommunications Excise Tax. See 86 Ill. Adm. Code 495.100(i). Section 495.100(i) states that, "[g]ross charges shall include the transmission charges for premium services. Time/weather, gab line/party line and other public announcement services of information and entertainment, and charges for the message content or information of such services, are not included in gross charges." Please note that charges for such services are not subject to Telecommunications Excise Tax provided that the charges for such services are disaggregated and separately identified from other charges in the books and records of the telecommunications retailer. See 86 Ill. Adm. Code 495.100.

A retailer maintaining a place of business in this State must collect and remit to the Department the tax imposed by the Act. The retailer shall be liable for the tax whether or not the tax has been collected by the retailer. 35 ILCS 630/5.

If a person who originates or receives telecommunications in this State claims to be a reseller of such telecommunications, the person is required to apply to the Department for a resale number. The applicant must state facts which show the Department why the applicant is not liable for tax on his purchases. The act or privilege of originating or receiving telecommunications in this State cannot be made tax free on the ground of being a sale for resale unless the person has an active resale number from the Department and furnishes that number to the retailer in connection with a sale to such person. 35 ILCS 630/8.

If a person originating or receiving telecommunications in this State elects not to apply for a resale number, the act or privilege of originating or receiving telecommunications in this State by such person cannot be made tax free. If a reseller is purchasing telecommunications services from a retailer and has not provided the retailer with an active resale number, the retailer is responsible for collecting the tax from the reseller for calls originating or terminating in this State.

### Catering

As noted above, 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. See 86 Ill. Adm. Code 130.2145.

Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. Section 1 of the Retailers' Occupation Tax Act defines the term, "selling price," as the "consideration for a sale valued in money ... 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. See also 86 Ill. Adm. Code 130.410.

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 sale of food. Such costs would include charges for linens, tables, chairs, dishes, glasses, flowers, labor, set-up, and delivery. 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. These costs are 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 and are initialed by the customer. This would be the case, for instance, with charges for entertainment (singers, bands, and the like).

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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RSW:msk