

Under the Service Occupation Tax, servicemen are taxed on tangible personal property transferred incident to a sale of service. See, 86 Ill. Adm. Code Part 140. (This is a GIL.)

September 28, 2011

Dear Xxxxx:

This letter is in response to your letter dated July 15, 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:

I am a member of the local ORGANIZATION.

I and another state member here in Illinois are pursuing research on the subject of Illinois Sales Tax applied to our Federal Health Benefits mail-order prescription drug programs.

I wrote the Illinois Attorney General regarding this and she has advised me to contact your department. Please see attached, 1) copy of my letter to Attorney General, and 2) her reply, and 3) copy of letter from former CONGRESSMAN.

The questions that have been raised are listed in my original letter and in Attorney General's reply to me.

We await your reply prior to seeking legal assistance in rectifying what we believe is a discriminating, unjust piece of legislation.

In your letter to Attorney General Lisa Madigan, you state as follows:

I am a retired employee with a Federal Government Health Benefit Plan.

The above plan includes a mail order prescription drug program through ABC.

Apparently most of us are not to [sic] observant as we obviously don't really review our RX statement that accompanies a mail order from ABC. I recently came to the realization that ABC has been, and is, charging us sales tax on our prescription mail order drugs. In checking, I find that those fellow retirees who have a federal XYZ mail order drug plan are also being charged sales tax on their prescription mail order drugs.

We all know that a prescription paid for locally, over the counter, does not entail any Illinois sales tax. Please refer to copy of letter from former CONGRESSMAN regarding my question about the above. I have contacted our State organization on this and our national office. These health plans include active/retired Employees and any Survivor Annuitants of deceased retirees.

I also contacted the XYZ but they declined any involvement in this. Therefore, I am asking your good office to provide us with some answers.

1. Why are we being charged sales tax on mail order RX's by Illinois when Illinois does not require sales tax on Illinois over the counter sales?
2. When was this legislation passed?
3. How does the state of Illinois know for sure it is actually receiving what they should be receiving from ABC and mail order plans?
4. How much does Illinois receive per year from the above.
5. This is discriminatory legislation and unfair legislation. What recourse do we have?
6. And, considering all the goings on in this state, just exactly what is done with all this money.
7. And the big question: What would be the legal ruling on this in your view if the above was pursued by all the organizations as discriminatory (besides the rural carriers have their own government health plan, ditto for the postal clerks union and letter carriers union and mail handlers union, plus, a variety of other federal department unions, etc).

Thank you for your time and expertise on the above.

#### **DEPARTMENT'S RESPONSE:**

The Department's regulation at 86 Ill. Adm. Code Section 130.311 governs Drugs, Medicines, Medical Appliances and Grooming and Hygiene Products and can be found on the Department's website. Those products that qualify as drugs, medicines and medical appliances are taxed at a lower State rate of 1% plus any applicable local taxes. Those items that do not qualify for the low rate of tax are taxed at the general merchandise rate of 6.25% plus applicable local taxes.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to service customers may 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 liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

It is my understanding that most pharmacists in this State use the third method to calculate their liability. As noted above, the third method is based upon the serviceman's cost price for the tangible personal property transferred. For example, if the serviceman paid \$20 for the drugs, he will owe Service Occupation Tax based upon his \$20 cost price even when he sells the drugs with a markup. It is important to stress that the third method is applicable only 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.

Customers purchasing prescriptions from these servicemen incur a corresponding Service Use Tax liability. The provisions of the Service Use Tax Act require the pharmacists to collect this tax from their customers. See 35 ILCS 110/3-40. Servicemen can collect this tax in one of two ways: (1) they can separately state the tax from the price of the service (and must do so if requested by the customer); or (2) they can include the tax in the total price of the service. How taxes are collected by such servicemen is generally a business decision of the servicemen and is not within the jurisdiction of the Department. Traditionally, many pharmacists in this State have included tax in the total price of the service.

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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