

Exclusively religious, educational, or charitable organizations that have been given E numbers by the Department are allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

December 28, 2011

Dear Xxxxx:

This letter is in response to your letter dated November 29, 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 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 on behalf of the FOUNDATION to request guidance as to whether they are obligated to collect and remit the Retailers' Occupation Tax.

The FOUNDATION is a 501(c)(3) organization and is exclusively charitable in nature. The have been issued an 'E number' by the State of Illinois. The Foundation sells merchandise to the general public via its website and at various fundraising events throughout the year. Items sold include bags, caps, apparel, lapel pins, and commemorative coins, substantially all of which bear the FOUNDATION's name and logo.

We are requesting guidance as to whether, based on the facts and circumstances of their particular situation, the Foundation is exempt from collecting and remitting the Retailers' Occupation Tax as provided for in Section 130.2005 of Title 86 of The Illinois Administrative Code.

According to Section 130.2005(a)(3)(A), exclusively charitable organizations are exempt from the Retailers' Occupation Tax 'when it can be said that such selling is noncompetitive with business establishments'. Section 130.2005(a)(3)(B) contains four tests for determining whether selling is noncompetitive. Each test, as it applies to the FOUNDATION, is addressed below:

- 1) *The transactions are conducted by members of the charitable entity and not by any franchisee or licensee.*

The Foundation's sales are made through a website or by volunteers of the Foundation and not by a franchisee or licensee. The Foundation's sales clearly meet this test.

- 2) *All of the proceeds must go to the charity.*

All proceeds from the Foundation's sales go directly to the Foundation and are used to further its charitable purpose. The Foundation meets this test as well.

- 3) *The transaction must not be a continuing one but rather should be held either annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative decision, to be made by the Department of Revenue.*

Since the Foundation sells items through their website, we recognize their sales could be considered continuous.

- 4) *The reasonably ascertainable dominant motive of most transfers of the items sold must be the making of a charitable contribution, with the transfer of property being merely incidental and secondary.*

Because substantially all of the items sold bear the FOUNDATION name and logo, we assume the dominant motive of people purchasing the merchandise is to make a charitable donation to the Foundation and to raise further awareness of the Foundation and its purpose.

Section 130.2005(a)(3)(C) of Title 86 of The Administrative Code provides two additional guidelines to resolve questions raised by each individual situation:

- *The nature of the particular item sold. All other things being equal, the decision as to candy might well be different from the decision as to refrigerators.*
- *The character of the particular sale, and the real practical effect upon punitive competition.*

While the Foundation's sales may be considered to be continuous (test 2 in Section 130.2005(a)(3)(B) above) all other criteria of Section 130.2005(a)(3)(B) are met. When all the facts and circumstances of the Foundation's sales are considered, we think it is unlikely that the FOUNDATION sales have any real effect on the sales of business establishments and are therefore noncompetitive in nature.

Should you need any further information in order to provide guidance as to whether the Foundation must collect and remit the Retailers' Occupation Tax on its sales, please feel free to contact me.

DEPARTMENT'S RESPONSE:

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.

Organizations that are recognized as non-profit under Internal Revenue Code Section 501(c)(3), are not necessarily exempt organizations pursuant to Illinois tax law. Such organizations must obtain an exemption identification number (an "E number") to qualify. See 86 Ill. Adm. Code 130.2007.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an E number. The E number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that currently only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

While organizations that have received an E number are, as a general matter, subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are three limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers' Occupation Tax liability. The limited exceptions available to not-for-profit organizations described in 86 Ill. Adm. Code 130.2005 include: (1) Sales to Members (see 86 Ill. Adm. Code 130.2005(a)(2)); (2) Noncompetitive Sales (see 86 Ill. Adm. Code 130.2005(a)(3)); and (3) Occasional Dinners and Similar Activities (see 86 Ill. Adm. Code 130.2005(a)(4)).

Thus, if an organization holding an E number makes sales to both members and nonmembers, then it would not qualify for that part of the exemption concerning sales to members. Further, if any of the materials the E-number holder sells are available through business establishments, then its sales would generally be in competition with business establishments and, thus, it would not qualify for that part of the exemption concerning noncompetitive sales and, as such, its sales would be taxable despite the fact that the items being sold bear the logo of the organization selling the items. For example, clothing items, such as hats, are generally considered to be items that are sold by other business establishments and the dominant motive for purchasing those items is for the acquisition of the property rather than merely as a token for the making of a donation. See 86 Ill. Adm. Code 130.2005(a)(3)(E).

Lastly, turning to the third part of the exemption, Occasional Dinners and Similar Activities, the Department's regulation provides, in part, that E-number holders may "occasionally" conduct certain activities they may not be subject to tax whether or not such activities are open to the public. Note, however, the regulation defines "occasional" to mean not more than twice in any calendar year. 86 Ill. Adm. Code 130.2005(a)(4).

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