

Governmental bodies incur Retailers Occupation Tax liability when selling tangible personal property to the public for use or consumption. The only exception is the sale of an item by a governmental body in the performance of its governmental function. See 86 Ill. Adm. Code 130.2055. (This is a GIL.)

January 11, 2012

Dear Xxxxx:

This letter is in response to your letter dated October 17, 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:

I am responding in regards to your letter on 10/5/2011 as attached. I am still trying to figure out if this law really applies to our school district. We purchase our books, like all other school districts, from Illinois retailers. We are not manufacturing books or competing with distributors since they are our source for books. I do not understand where the competition is. We are also buying the books back from the students and reselling them the following year. Could this not be viewed more as a rental from our students for our books? How are we different from any other school districts who give books to their students for an overall fee that is included with other expenses and then collects the books at the end of the term? They do not pay an extra sales tax to the state, do they? We would like to be viewed like any other public school who provides books to their students. They do not have inflated costs based upon paying an extra tax to the state. What do we need to do to not be in conflict with this Illinois code? Can it be considered a rental fee? I appreciate any help you can provide our school district in this time of economic crunch.

DEPARTMENT’S RESPONSE:

In our previous response to you regarding the same subject matter as this request, we explained that when governmental units make sales that are not in the direct performance of their governmental function, the sales are generally taxable. See 86 Ill. Adm. Code 130.2055. Examples of taxable sales by governmental units include the operation of concession stands by park districts, sales of smoke detectors by fire protection districts, sales of leaf bags by municipalities, sales of books and supplies by school districts and sales of T-shirts, caps and mugs by State agencies. When making these types of sales, governmental units must not give their suppliers their exemption identification "E" numbers. They must, rather, register as retailers with the Department and remit Retailers' Occupation Tax on their sales. They may make tax-free purchases of the tangible personal property to be sold by providing Certificates of Resale to their suppliers. See, 86 Ill. Adm. Code 130.1405. The object is to ensure that governmental units do not have a competitive advantage when selling items that are also sold by Illinois retailers. The Illinois General Assembly did not intend to give government a competitive selling advantage over Illinois citizens.

The Department once promulgated a regulation that would have permitted school districts and private schools to sell books and educational supplies to students tax-free. However, retailers of books and school supplies who were adversely affected by that regulation filed a lawsuit and the regulation was voided by the Illinois Supreme Court. See, *Follett's Illinois Book and Supply Store, Inc. v. Isaacs, Director of Revenue*, 27 Ill. 2d 600, 19 NE 2d 324 (1963).

In your previous letter you indicated that the school district sells its kids "their books at the beginning of the semester and then they sell them back to us [the school district] at the end of the semester." In your letter dated October 17, 2011, you indicate that the school district purchases its books from ABC, you buy the books back from the students and resell the books to the students the following year. Clearly, you indicate that sales are taking place. Accordingly, we continue to conclude that a school district incurs a Retailers' Occupation Tax liability when it makes retail sales of books and supplies to students because such sales are in competition with other retailers.

In rental or leasing situations, however, with the exception of leases of automobiles for periods of one year or less, Illinois does not tax rental receipts received under true leases. A true lease either has no purchase option by the lessee at the end of the lease term, or a purchase option for the fair market value of the leased item at the end of the lease term. On the other hand, a lease which transfers title to the property to the lessee at the end of the lease, or contains a provision which allows for the purchase of the property at the end of the lease for a bargain purchase price, is not considered a true lease, but rather is a conditional sale.

Tax is due on receipts received under a conditional sale when received by the "lessor." Lessors of items of tangible personal property are considered to be users of that property, and, as such, owe Use Tax when they purchase tangible personal property to be used for rental purposes. The Use Tax liability is the lessor's, not the lessee's. While it would be permissible for the lessee to adjust the price he charges his customers to reimburse himself for the Use Tax liability, the lessor may not charge this amount to his customers designated as "tax". The customers do not, as lessees, incur the tax liability. The liability falls on the lessor.

Note, although the general rule, as stated above, is that lessors incur Use Tax liability on their cost price of rental property, the Department has determined that schools that have been issued an E number can use that number to purchase rental books tax free because the renting of textbooks to students by schools is generally considered a use of the books by the schools in furtherance of their educational purposes.

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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