

This letter discusses deal-of-the-day transactions. 35 ILCS 120/1. (This is a GIL.)

February 28, 2012

Dear Xxxxx:

This letter is in response to your letter dated January 7, 2012, 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:

My client has requested that I research possible taxes applicable for to [sic] a prospective business venture. The business would be an e-commerce website, conducting all of its business online. The company would be based in Illinois, and all of its business would be done in Illinois. The business would sell discounted promotions for alcohol (and food) at various bars and restaurants.

Customers would purchase the promotion on the website and redeem their deal from the establishment, similar to Groupon. There would be no exchange of tangible products between my client and the buyer. All products would be provided by the third party.

The arrangements between my client and the establishments may vary. Some establishments may require my client to purchase the right to sell these promotions for a certain dollar amount, i.e. \$5. Others may provide the deals free of charge to my client, and treat it as a payment for marketing services, to bring additional customers into their bar or restaurant.

We would like to know what taxes, if any, my client would be obligated to pay. This is for the sale of discounted promotions to a third party for use at an unrelated establishment. It is my understanding that there is no sales or use tax on the sale of intangibles. My client would be selling the right to go to a bar and get drinks for a

discounted price. It is not selling a product; it is selling a right to participate, which is clearly an intangible.

I don't find anything equivalent on the Department of Revenue website, or in your past letter rulings. We want to set this up properly, and not have a tax problem down the road. Do you agree that my client is not responsible for a sales or use tax? If you don't agree, please provide me with a definitive answer and the basis for your position.

DEPARTMENT'S RESPONSE:

The Department is in the process preparing a bulletin to explain the treatment of Deal-of-the-Day sites. The following guidance was provided at a practitioners' meeting held by the Department in Chicago on February 2, 2012.

Section 2-10 of the Retailers' Occupation Tax Act imposes tax "at the rate of 6.25% of the gross receipts from sales of tangible personal property made in the course of business." 35 ILCS 120/2-10. Section 1 of the Retailers' Occupation Tax Act defines "gross receipts" as "the total selling price or the amount of such sales, as hereinbefore defined." 35 ILCS 120/1. Section 1 also defines "selling price or the amount of sale" as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other as hereinafter provided, and services . . . and shall be determined 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 . . ."

In a typical Deal-of-the-Day-type transaction, a Deal-of-the-Day voucher for \$50 of food is offered to customers for \$25. When the customer redeems the Deal-of-the-Day voucher, that transaction is taxable because it involves the sale of tangible personal property (in this case, food). If the retailer knows the amount that the customer paid for the voucher, then the amount that the customer paid for the voucher is taxable when the voucher is redeemed. The Department realizes that in some cases it may be difficult for a cashier to know at the time of sale/redemption of the Deal-of-the-Day voucher how much the customer paid for the voucher. As a result, retailers that do not know how much the customer paid for the voucher may calculate tax on the full value of the Deal-of-the-Day voucher.

The above transaction would be taxable as follows:

Example 1: \$50.00 customer orders \$50 of food; presents \$50 voucher
\$25.00 subject to tax if retailer knows customer paid \$25 for voucher

TAX BASE IS \$25

\$2.00 Total paid by customer (8% tax on \$25)

Example 2: \$50.00 customer orders \$50 of food; presents \$50 voucher
\$50.00 subject to tax if retailer does not know what customer paid for voucher

TAX BASE IS \$50

\$4.00 Total paid by customer (8% tax on \$50)

Example 3: \$60.00 customer orders \$60 of food; presents \$50 voucher
\$25.00 subject to tax if retailer knows what customer paid for voucher
+\$10.00 receipts paid by customer for the additional food

TAX BASE IS \$35

\$ 2.80 (8% tax on \$35)
\$12.80 Total paid by customer

Example 4: \$60.00 customer orders \$60 of food, presents \$50 voucher
\$50.00 subject to tax if retailer does not know what customer paid for
voucher
+\$10.00 receipts paid by customer for the additional food

TAX BASE IS \$60

\$ 4.80 (8% tax on \$60)
\$14.80 Total paid by customer

In contrast to the retailers who are selling the food or other items when the Deal-of-the-Day voucher are redeemed, the persons who are engaged in the business of selling cards or coupons, or vouchers, which entitle purchasers to the right to redeem those cards for tangible personal property, are not engaged in selling tangible personal property. Rather, they are making sales of intangibles. Such sales are not subject to the Retailers' Occupation Tax.

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

RSW:mzk