

ST 13-0047-GIL 09/10/2013 EXEMPT ORGANIZATIONS

Exclusively religious, educational, or charitable organizations 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.)

September 10, 2013

Dear Xxxxx:

This letter is in response to your letter dated June 28, 2013, 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:

In past years, when we have collected revenue for beer sales at FESTIVAL, we have not paid sales tax on these items. I have had numerous conversations with Illinois Dept. of Revenue employees and their understanding was that our festival fulfilled the requirements highlighted below, specifically:

What if an exempt organization sells items? (From “Sales & Property Tax Exemption” (PIO-37) IDR website)

If your organization is exempt from paying sales taxes on its purchases, it still must collect sales taxes on items it sells, except in three instances below.

- The items are sold only to the organization’s members, students, patients, or inmates.

- The sales are from occasional dinners open to the general public, no more than twice in any one year.
- The sales are not in direct competition with businesses in the community.

In past years, the employees at the IDR have equated the “occasional dinners” to our community festival. I call every year, to confirm that the regulations have not changed. This year, I spoke to three different individuals, who were unfamiliar with the exact rules. I finally spoke with the IDR General Help desk and she found the publication. We seem to qualify for the exemption, but she brought up that she doesn’t know whether alcohol is included in this exemption. She suggested I call the Liquor Commission and they would know whether liquor is exempt.

I have been trying to call the Liquor Commission in Chicago. The one in Springfield referred all legal questions to Chicago. I have been on hold for a long time and can’t get through to anyone in Chicago.

This is our scenario:

We own a restaurant, golf pro-shop and pool. We sell concessions, food, alcohol, for which we always file and pay sales tax on a monthly basis.

We hold a community family-oriented festival every year. We sell alcohol to defer our costs, as well to attract patrons. The festival is put on by the Park District and our employees and volunteers work the festival.

In the past, we were told that our festival fell under the sales tax exemption. This year, the question came up, by IDR, whether sale of alcohol is included in this exemption.

Question for State of Illinois Liquor Control Commission Legal: Is alcohol included in this exemption?

Question for State of Illinois Liquor Control Commission Legal: How do we follow up every year to see whether the law has changed?

I spoke with IDR at the following IDR number: XXX-XXX-XXXX. The State of Illinois Liquor Control Commission numbers I was given are the following: XXX-XXX-XXXX.

A response to my inquiry would be appreciated.

I am going to be away from the office for the next two weeks, but I will be back in the office on July 15th. If you have a response before I get back, or would like to discuss any issues, please refer these to my Director.

DEPARTMENT’S RESPONSE:

Organizations that qualify as exclusively religious, charitable, or educational organizations can apply to the Illinois Department of Revenue to obtain a tax exemption identification number. These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. While organizations and institutions that are both operated and organized exclusively for charitable, religious, or educational purposes are as a general matter subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers Occupation Tax liability. Exclusively charitable, religious and educational organizations that hold exemption numbers may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities without incurring Retailers' Occupation Tax liability. 86 Ill. Adm. Code 130.2005(a)(2)-(4). Please note that Section 130.2005 does not apply to sales by governmental bodies.

Section 130.2055(a) of the Administrative Code governs sales by governmental bodies. Section 130.2055(a) provides that “the State of Illinois or any local governments in Illinois, or any agency or instrumentality of any such government body, incurs Retailers' Occupation Tax liability when it engages in the selling of tangible personal property at retail to the public other than in the performance of a governmental function.” The object of this rule is to ensure that governmental bodies 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.

An example of sales that may be made by a governmental body to the public that involves the performance of a governmental function is the sale of motor vehicle license plates by the State of Illinois. Where a governmental unit makes sales that are not in the direct performance of its governmental function, the sales are taxable. 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 T-shirts, caps and mugs by State agencies, sales of books by libraries, and sales of books and supplies by school districts to students.

It is the Department’s position that sales of alcohol by a governmental body are not in the direct performance of its governmental function. Sales of tangible personal property, including alcohol, by a governmental body at a festival are subject to 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

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