

Costs of doing business are an element of the retailer's gross receipts subject to tax even if separately stated on the bill to the customer. *See* 86 Ill. Adm. Code 130.410. (This is a GIL.)

April 8, 2014

Dear Xxxx:

This letter is in response to your letter dated February 20, 2014, 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 a Registered Dietitian in Private practice. I use the Square to accept credit card payments. I am writing to inquire the legalities of charging my clients a \$3.00 service charge when they use credit cards for payments. Charging the client 3.00 helps to cover the 2.75% charge from Square. So, for instance I charge 60.00 for a visit for check payment. I would charge 63.00 if the client pays by credit card. Is this legal?

Thank you and I hope I explained this clearly.

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 at retail to purchasers for use or consumption. 86 Ill. Adm. Code 130.101. In Illinois, a Use Tax is also imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

In computing Retailers' Occupation Tax liability, no deductions shall be made by a taxpayer from gross receipts or selling prices on account of the cost of doing business. *See* 86 Ill. Adm. Code 130.410. Costs of doing business are an element of the retailer's gross receipts subject to tax even if separately stated on the bill to the customer. For example, a retailer may choose to accept payment from a customer through the use of a credit or debit card, and the retailer may not receive the full amount of payment due to the service charges or fees charged by the credit or debit card company. These charges or fees are part of the retailer's cost of doing business and are not deductible from the gross receipts subject to tax.

Some states disallow the act of imposing a surcharge on transactions where the customer chooses to pay by credit card instead of by check, cash, or other means. Currently, Illinois does not prohibit such a charge, but legislation was introduced in Illinois in 2013 to end this practice. In sum, imposing a surcharge to cover the cost of a credit card surcharge is currently legal in Illinois, but you must include the charge that you collect in your taxable gross receipts.

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,

Cara Bishop
Associate Counsel

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