

## ST 15-0003-GIL 01/06/2015 GROSS RECEIPTS

When membership fees are applied to the purchase price of tangible personal property, they are considered gross receipts and are therefore taxable. See 86 Ill. Adm. Code 130.401(d). (This is a GIL.)

January 6, 2015

Dear Xxxx:

This letter is in response to your letter received on September 15, 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](http://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:

Pursuant to 2 Ill. Adm, [sic] Code 1200.110, we are requesting the Illinois Department of Revenue to issue a Private Letter Ruling with respect to the factual situation set forth below.

### General Information:

1. I am an officer of the Company, COMPANY, and am authorized to represent the Company before the Illinois Department of Revenue.
2. This Private Letter Ruling ("PLR") is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailers' Occupation Tax consequences of the actual business practices of the Company.
3. The Company is not currently engaged in litigation with the Department in regards to this or any other tax matter.
4. The Company is not currently under audit by the Department in regard to this or any other tax matter.
5. To the best knowledge of the Company the Department has not previously ruled regarding this matter for the Company. In addition, the Company has not submitted the same or similar issue to the Department.
6. The Company requests that certain information be deleted from the PLR prior to dissemination to others. The Company requests that its name, address, location of the facility and the name of its representative be deleted.
7. The Company is not aware of any authority contrary to the authorities referred to and

cited below.

### Statement of Material Facts

1. The Company is in the process of opening its first store in [CITY, ILLINOIS].
2. The Company is part of a group of companies that include a Manufacturing/Wholesale Company.
3. The Company will acquire all of its inventory from the Manufacturing Company. Substantially all of these products will be private labeled as to the Manufacturing Company.
4. The Company's store will be open to the customers of the Manufacturing Company to purchase goods at wholesale prices. These customers will be required to present a valid Reseller's Certificate and not be subject to Sales Tax. The Company will also open the Store to the general public, to purchase the same goods at retail prices. Sales to the public are being offered as a way to enhance the product name and increase demand for the Manufacturing product line.
5. The Company will display two prices on the shelf for each product, the Wholesale price and the Retail price.
6. The Company desires to pass along additional savings to the Retail customer by offering them the ability to pay the Wholesale prices, with the payment of a membership fee. The membership fee is based on a percentage of the savings of the retail customer.
7. At the checkout, the Retail customer will be presented with the total of their purchase at retail pricing. They will also be shown what the total of their purchase would be at wholesale pricing along with the amount of the membership fee to be paid to obtain the favorable pricing. If they choose not to take advantage of the offer, the sale will conclude at retail pricing, subject to ROT. If they choose to pay the membership fee, the sale will be concluded at wholesale pricing, subject to ROT and the membership fee will be added to the total sales.
8. Customers who choose to pay the membership fee will be enrolled in the membership program and will be eligible for future discounts and other membership benefits.

### Ruling Requested

The Company requests the Illinois Department of Revenue to rule that the membership fee charged will not be subject to Illinois Retailers' Occupation Tax or Illinois Use Tax.

### Relevant Authorities

Illinois Retailers' Occupation Tax is imposed upon persons engaged in Illinois in the business of selling at retail tangible personal property (see 86 Ill. Adm. Code 130.101). A membership fee is considered an intangible, which is not subject to Retailers' Occupation Tax or Use Tax liability. (see 86 Ill. Adm. Code 130.120)

### **DEPARTMENT'S RESPONSE:**

The Department cannot provide a specific answer to your request based on the limited information contained in your letter regarding the fees that you charge customers.

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. 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then neither Illinois Retailers' Occupation Tax nor Use Tax would apply. Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to customers incident to the services being provided then no Illinois Service Occupation Tax nor Service Use Tax would apply.

Generally, the Department does not consider receipts from the sale of membership fees to be gross receipts from the sale of tangible personal property. Rather, a membership fee is considered an intangible, which is not subject to Retailers' Occupation Tax or Use Tax liability. 86 Ill. Adm. Code 130.401(d). This is the case when the sale of membership rights does not include the transfer of tangible personal property. However, if the membership charge entitles the customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to that service, then that charge may result in either Retailers' Occupation Tax liability, Service Occupation Tax liability or Use Tax liability, depending upon the serviceman's activities. See 86 Ill. Adm. Code 140.101. The information that you have provided seems to indicate that a fee is charged for each item that is purchased, and the fee is related to the price of each particular item. When membership fees are applied to the purchase price of tangible personal property, they are considered gross receipts and are therefore taxable. See 86 Ill. Adm. Code 130.401(d). We cannot provide you with a more specific answer without reviewing contracts such as membership agreements and other pertinent documents.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://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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