

A retailer maintaining a place of business in Illinois or a retailer authorized by the Department to collect Use Tax must collect the Use Tax from the purchaser based on the selling price of tangible personal property, including the value of any discount coupons for which the retailer will receive full or partial reimbursement. See 35 ILCS 105/3-45.

May 18, 2015

Dear XXXX:

This letter is in response to your letter dated April 29, 2015, 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 writing to request a private letter ruling from the Illinois Department of Revenue (“Department”) on behalf of COMPANY (“COMPANY”), pursuant to 2 IAC 1200.110. This request concerns the application of Retailers’ Occupation and Use Taxes when a retailer allows a purchaser a discount from the selling price on the basis of a discount coupon for which the retailer receives full reimbursement from a manufacturer, distributor or other source.

A Power of Attorney (Form IL-2848) from COMPANY is enclosed as Exhibit A.

I. Statements of Facts

COMPANY is a OUT-OF-STATE corporation with its principal offices at LOCATION. COMPANY operates over 50 retail stores within Illinois. The COMPANY stores within Illinois accept certain coupons issued by manufacturers or distributors for which it receives full reimbursement from such manufacturers or distributors.

II. Ruling Requested

COMPANY requests the following ruling:

1. If COMPANY sells an item for \$10 and the consumer provides COMPANY with a \$1 manufacturer's coupon for which COMPANY will receive full reimbursement (*i.e.*, \$1.00) from the manufacturer of the item, it can collect use tax from the consumer on the full \$10 purchase price.

III. Authorities and Analysis

The Illinois "sales tax" is comprised of two interrelated and complementary statutes - the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*) ("ROTA") and the Use Tax Act (35 ILCS 105/1, *et seq.*) ("UTA"). The ROTA imposes a tax on retail sellers of tangible personal property. The UTA imposes a tax on purchasers at retail for the privilege of using tangible personal property. A single retail purchase and sale of tangible personal property triggers the imposition of both taxes (one on the retailer and one on the purchaser), but only one tax is remitted to the Department of Revenue, which satisfies both taxes.

The complementary nature of the ROTA and UTA allows retailers to collect reimbursement for their ROTA tax liability from their customers. *Id. See also Ogden Chrysler Plymouth, Inc. v. Bower*, 348 Ill. App. 3d 944, 956 (2d Dist. 2004) ("Retailers are permitted to collect a use tax from purchasers to reimburse themselves for their ROT expense."); *Brown v. Zehnder*, 295 Ill. App 3d 1031, 1034 (1st Dist. 1998) ("[T]he Department of Revenue determined that a retailer may reimburse himself for his ROTA liability by collecting the use tax from his customers.") (*citing* 86 Ill. Admin. Code § 130.101 (d); *Kean v. Wal-Mart Stores, Inc.* 235 Ill. 2d 351, 363 (2009) ("only one tax is remitted to the Department of Revenue, and the single payment satisfies both taxes").

Both the ROTA and the UTA expressly provide that a person's tax liability is computed as a percentage of the "gross receipts" or "selling price" of the tangible personal property. See 35 ILCS 120/2-10 (setting retailer's occupation tax at 6.25% of "gross receipts"); 35 ILCS 105/3-10 (setting use tax rate at 6.25% of selling price). "Gross receipts" from tangible personal property are defined as "the total selling price or the amount of such sales ..." 35 ILCS 120/1. "Selling price" is defined as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits..." 35 ILCS 105/2. The retailers' occupation tax and the consumers' use tax are the same amount. *Kean*, 235 Ill. 2d at 364 (2009) (*citing* 35 ILCS §§ 120/1 & 105/2; *Nava v. Sears, Roebuck & Co*, 2013 IL App (1st) 122063, 995 N.E.2d 303, 309 (1st Dist. 2013) ("a retailer's tax liability under both ROTA and the Use Tax Act is computed as a percentage of its gross receipts, or selling price, and the tax rates under those statutes are set at an identical [] percent.")).

Neither ROTA nor the UTA directly address the proper tax treatment of retail sales involving coupon redemptions. The DOR, however, has issued regulations on this issue. When a retailer receives no reimbursement for the coupon (*e.g.*, a coupon issued by the retailer itself), the ROTA tax liability is based on the discounted price after redemption of the coupon. 86 Ill. Adm. Code 130.2125(b)(1)(2008). In contrast, when a

retailer will receive full or partial reimbursement for the coupon (e.g., a manufacturer's coupon, as in this case), the ROTA tax liability is computed based on gross receipts, including the amount of the reimbursement from the coupon:

If a retailer allows a purchaser a discount from the selling price on the basis of a discount coupon for which the retailer will receive full or partial reimbursement (from the manufacturer, distributor or other source), the retailer incurs Retailers' Occupation Tax liability on the receipts received from the purchaser and the amount of any coupon reimbursement. For example, if a retailer sells an item for \$15 and the purchaser provides the retailer with a \$5 manufacturer's coupon for which the retailer receives full reimbursement from the manufacturer of the item, the retailer's gross receipts of \$15 are subject to Retailers' Occupation Tax. Technically, the coupon issuer (the manufacturer in this example) owes the corresponding Use Tax on the value of the coupon. However, in many cases, the coupon issuer incorporates language into the coupon that requires the bearer (the purchaser in this example) to assume the Use Tax liability.

86 Ill. Adm. Code 130.2125(b)(2)(2008)

The above regulation is not dispositive on the issue of whether the retailer can pass its retailer's occupation tax liability related to the coupon amount on to the customer because the manufacturer does not have a use tax liability under the UTA. The UTA imposes a tax upon "the privilege of using in this State tangible personal property purchased at retail from the retailer.." 35 ILCS 105/3. The manufacturer is not in fact using any personal property in this state such that is subject to use tax.

Illinois law permits retailers to collect reimbursement from purchasers for the full amount of any retailers' occupation tax due to the Department. 35 ILCS 105/3-45; see *also Ogden Chrysler*, 348 Ill. App. 3d at 956 ("Retailers are permitted to collect a use tax from purchasers to reimburse themselves for their ROT expense."); *Brown*, 295 Ill. App. 3d at 1034 ("[T]he Department of Revenue determined that a retailer may reimburse himself for his ROTA liability by collecting the use tax from his customers."). Thus, a retailer is permitted to collect use tax from a purchaser on the full amount of the item even though the purchaser receives a discount from the selling price on the basis of a discount coupon for which the retailer will receive full reimbursement from a manufacturer, distributor or other source. See General Information Letter No. ST 04-0238-GIL (12/20/04) (advising consumer that he would be responsible for tax on the amount of the car manufacturer's reimbursable discount certificate because such amount is included in "gross receipts" subject to retailers' occupation tax.)

The retailer must be permitted to collect use tax from the purchaser on the full amount of the item without regard to the language on the back of the coupon. Because the manufacturer is not liable for use tax it does not have any liability to transfer to the purchaser. This result makes sense as a practical matter. If the DOR only allowed a retailer to collect the full amount of its ROTA tax liability from the consumer when the back of the manufacturer's coupon specifically stated that the bearer would be responsible for the tax on the coupon, then every retail sales clerk in Illinois would need to review all of the fine print on the back of every single manufacturer's coupon to search for similar language, interpret whether that language adequately shifts the tax burden to the consumer and then determine the appropriate tax.

IV. Conclusion

Consistent with 2 IAC 1200.110, COMPANY states as follows:

1. COMPANY is unable to locate any case law or regulations that are dispositive of the subject of this request.
2. The subject of this request is not an identical issue involved in COMPANY's return for an earlier period.
3. To the best of the knowledge of both COMPANY and its representative, the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, and neither COMPANY nor its representative have previously submitted the same or a similar issue to the Department but withdrew the request before a letter ruling was issued.

If you have any questions or require any additional information, please contact me at XXX-XXX-XXXX. I would be happy to meet with you at your convenience to respond to any questions you may have about this request.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department has reviewed your request and has decided to issue a general information letter. We hope you find the following general information regarding the tax consequences of discount coupons helpful.

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 Retailers' Occupation Tax is imposed on the gross receipts from sales of tangible personal property. See 35 ILCS 120/2-10. Gross receipts from sales of tangible personal property at retail means the total selling price of the tangible personal property. Selling price includes all consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property...and services... See 35 ILCS 120/1. If a retailer allows a purchaser a discount from the selling price on the basis of a discount coupon for which the retailer will receive full or partial reimbursement (from a manufacturer, distributor or other source), the retailer incurs Retailers' Occupation Tax liability on the receipts received from the purchaser and the amount of any coupon reimbursement. Thus, a manufacturer's coupon for which a retailer will receive full or partial reimbursement is included in gross receipts, and the amount of such coupon discount is part of the selling price of tangible personal property. Therefore, the amount of the coupon discount is subject to Retailers' Occupation Tax.

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. A retailer maintaining a place of business in Illinois or a retailer authorized by the Department to collect Use Tax must collect Use Tax from a purchaser. Retailers must collect the tax from users by adding the tax to the selling price of tangible personal property. See 35 ILCS 105/3-45. Because the Retailers' Occupation Tax and the Use Tax work together in a complementary fashion, Section 2 of the Use Tax Act contains the equivalent definition of "selling price" that is contained in Section 1 of the Retailers' Occupation Tax Act. Selling price means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property... and services... See 35 ILCS 105/2. Selling price includes any discount coupons for which the retailer will receive full or partial reimbursement. For this reason, the retailer must collect the Use Tax from the purchaser based on the selling price of tangible personal property, including the value of any discount coupons for which the retailer will receive full or partial reimbursement.

It appears that there is some confusion in this area of the law. We are currently in the process of amending the regulation on the taxability of discount coupons (86 Ill. Adm. Code 130.2125) to clarify the law on this subject, which is explained above.

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

CB:kd