

ST 16-0066-GIL 12/19/2016 SALE AT RETAIL

If no tangible personal property is transferred to the customer, then no Illinois Retailers' Occupation Tax or Service Occupation Tax would apply. See 86 Ill. Adm. Code Parts 130 and 140. (This is a GIL.)

December 19, 2016

Dear Xxxxx:

This letter is in response to your letter dated May 31, 2016, in which you requested 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 NAME, TITLE of COMPANY and I am authorized to request a Tax Ruling on behalf of the Company.

Taxpayer's identifying information is set out as follows:

COMPANY

ADDRESS

CITY, STATE #####

STATE 1 Taxpayer No. #####

Federal ID. No: #####

Formed in STATE

Statement of Relevant Facts

COMPANY. operates a complex amusement stores with Bowling, Arcade game, Karaoke, Billiards, Darts & Ping Pong. In addition, we sell food and beverage to our customers while they play these various amusement games. We also offer party packages such as birthdays, corporate events and holiday celebrations. We have an existing store in CITY 1.

Statements Relating to Request

MONTH 1, 20XX to MONTH 31, 20XX

This issue is not under consideration by the Illinois Department of Revenue in connection with an audit examination of any type, a refund request, a voluntary disclosure agreement, administrative hearing, or litigation for COMPANY.

We also made a similar request from taxing jurisdiction of other states where our business is located.

Questions:

We want to confirm if the sales tax and if there are any other taxes applicable on the following business activities,

- 1) Bowling Pro-Shop-We sell some souvenir items such as bags, bowling balls, socks and other bowling items to our customers.
- 2) Membership Card- We offer membership cards to our customers with an annual fee. With these cards they can avail of discounts on our amusement services and arcade games.
- 3) Bowling
 - We offer games by playtime (ie. 90 to 120 minutes for peak days, unlimited play time slow days)
 - We offer games by game played. (ie. 1 game, 2 games)
 - We offer bowling parties/packages with food and drink
- 4) Bowling Locker Rental-Rate is per day or per year
- 5) Shoe Rental-a fee to borrow bowling shoes
- 6) Billiards, Darts, Karaoke, Pingpong-rate is per hour to play these amusement games
- 7) Sales of meals and beverages
- 8) Sale of beer, draft & Wine—In addition to sales tax are we required to pay liquor tax?
- 9) Arcade games-These are considered coin-operated amusement devices where a customer will use a card instead of coin and they can play the various arcade games. We offer time play and unlimited play and other special game card.

We also have redemption machines where the customers could redeem some toys, prizes using the tickets they got from playing these machines, and crane machines that the customer could use to grab a toy prize. Since the cost of the

prizes are material part of the amusement service, could we use the Certificate of Resale for the purchase of these redemption prizes without the sales tax?

For more information, you can also visit our website.

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). Further, the Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject of the request, the Department will decline to issue a letter ruling on the subject." 86 Ill. Adm. Code 1200.110(a)(3)(D). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope, however, the following General Information Letter will be helpful in addressing your questions.

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

Meals, Beverages, Beer, and Wine

If you are engaged in the sale of meals, beverages, beer, or wine, you are engaged in the sale of tangible personal property and must collect Retailers' Occupation Tax and any applicable local taxes on such sales. The State of Illinois does not require you to collect and remit liquor tax on such sales as liquor tax is generally collected by the distributor. See the Liquor Control Act, 235 ILCS 5/8-2.

Bowling, Billiards, Darts, Karaoke, Ping-Pong

Illinois Retailers' Occupation Tax and Use Tax are imposed only upon tangible personal property. When tangible personal property such as bags, socks, and bowling balls, is sold to customers, such items are subject to Retailers' Occupation Tax. In contrast, as long as no tangible personal property is transferred, sales of activities such as bowling, karaoke, and ping pong would not be subject to Retailers' Occupation Tax or Use Tax.

Locker Rental

Illinois does not tax rental receipts. Therefore, the rental of a locker for purposes of bowling is not subject to tax. Similarly, shoe rentals are not subject to tax in Illinois. Lessors are considered end users of the tangible personal property they purchase for rental purposes. As end users of tangible personal property located in Illinois, lessors under a true lease owe

Use Tax on their cost price of such property. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be allowed a credit against Use Tax to the extent of the amount of the tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310(a)(3).

Parties

Based on the descriptions in your letter, it appears that you offer bowling party packages which include food or drink. When a single charge is made for both entertainment and food, and the charge for food and drink is not separately stated on the customer's bill, the entire charge is subject to Retailers' Occupation Tax. We cannot determine the taxability of your bowling parties without examining the invoices. However, if the charges do not include a separate line for the tangible personal property, i.e., food and drink, the entire charge for the party would be subject to tax. See 86 Ill. Adm. Code 130.2145(c)(2)(B).

Membership Cards

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.

Arcade Games and Redemption machines

The Coin-Operated Amusement Device and Redemption Machine Tax Act imposes an annual privilege tax on the privilege of operating, in this State: 1) every coin-in-the-slot-operated amusement device that returns to the player no money or property or right to receive money or property; and 2) every redemption machine, as defined in 86 Ill. Adm. Code 460.105. See 86 Ill. Adm. Code 460.101.

For an amusement device to be taxable, it must be operated by coin, token, chip, or similar objects, and it must be an amusement device. The device cannot return money or property or the right to receive money or property to the player. An amusement device is a device which is played primarily for amusement or entertainment rather than for the purchase of some specific commodity or service. Every kind of coin-operated amusement device, which does not return money or property or the right to receive money or property to the player, is subject to the tax. 86 Ill. Adm. Code 460.105(a).

A "redemption machine" is a single-player or multi-player amusement device involving a game, the object of which is throwing, rolling, bowling, shooting, placing, or propelling a ball or other object that is either physical or computer generated on a display or with lights into, upon, or against a hole or other target that is either physical or computer generated on a display or with lights, or stopping, by physical, mechanical, or electronic means, a moving object that is either physical or computer generated on a display or with lights into, upon, or against a hole

or other target that is either physical or computer generated on a display or with lights, provided that all of the following conditions are met:

- A) The outcome of the game is predominantly determined by the skill of the player;
- B) The award of the prize is based solely upon the player's achieving the object of the game or otherwise upon the player's score;
- C) Only merchandise prizes are awarded;
- D) The wholesale value of prizes awarded in lieu of tickets or tokens for single play of the device does not exceed \$25, and
- E) The redemption value of tickets, tokens, and other representations of value, which may be accumulated by players to redeem prizes of greater value, for a single play of the device does not exceed \$25. 720 ILCS 5/28-2(a)(4).

The operator of those games incurs Use Tax on the purchase price of the tangible personal property that the operator provides as prizes for the games. Such an operator may not provide a Certificate of Resale when purchasing the tangible personal property that is to be provided as prizes. If the operator has not paid the Use Tax to his Illinois suppliers, the operator must register and remit the tax to the Department of Revenue. See 86 Ill. Adm. Code 130.1975.

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
Senior Counsel

CB:bkl