

ST 17-0019-GIL 06/08/2017 GROSS RECEIPTS

When the incidence of a tax is imposed upon consumers, it does not become part of the selling price of an item subject to Retailers' Occupation Tax. (See Section 130.435)
(This is a GIL.)

June 8, 2017

Dear Xxxxx:

This letter is in response to your recent inquiry requesting 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 requires that we respond with a GIL. You have asked whether the Cook County Sweetened Beverage Tax ("CCSBT") becomes part of the selling price of the beverage for purposes of properly calculating liability under the Retailers' Occupation Tax Act.

Please be advised that for purposes of calculating Retailers' Occupation Tax liability, the CCSBT is not part of the selling price of a beverage subject to Retailers' Occupation Tax. In other words, the CCSBT does not become part of the tax base used to calculate Retailers' Occupation Tax liability.

Under the Retailers' Occupation Tax Act, tax is imposed upon the selling price of tangible personal property. Department regulations at 86 Ill. Adm. Code 130.435 provide that when the incidence of a tax is imposed upon consumers, it does not become part of the selling price of an item. However, when a tax is imposed at the wholesaler/importer level, it becomes part of the selling price of an item. Taxes imposed at the wholesaler/importer level are generally passed on to retailers and become part of a retailer's costs of doing business. Under the sales taxes, costs of doing business can never be excluded from the selling price of an item. The examples found in Section 130.435 are instructive. For instance, because the Cook County Liquor Gallonage Tax is imposed upon consumers, it does not become part of the selling price subject to Retailers' Occupation Tax. In contrast, taxes imposed under the State Liquor Control

Act of 1934 are imposed at the wholesaler/importer level and are included in the selling price subject to Retailers' Occupation Tax.

The CCSBT is imposed in the same manner as the Cook County Liquor Gallonage Tax. Because it is imposed upon consumers, it must be excluded from the sales tax base for purposes of calculating liability under the Retailers' Occupation Tax Act. Please be advised that inclusion of the CCSBT in the sales tax base constitutes an overcollection, for which there are specific penalties in Section 13 of the Retailers' Occupation Tax Act.

The CCSBT is administered and enforced by Cook County, not by the Illinois Department of Revenue. For questions concerning the CCSBT, we suggest that you contact Cook County or review the County's Sweetened Beverage Tax Regulation 2017-2 at <https://www.cookcountyil.gov/service/sweetened-beverage-tax>.

Very truly yours,

Jerilynn Troxell Gorden
Deputy General Counsel

JTG:bk1