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August 4, 2017

Dear Xxxxx:

This letter is in response to your letter dated May 23, 2017, 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:

In MONTH, 2018 the ASSOCIATION, an IRC Section 501(c)(3) non-profit organization, will conduct the inaugural EVENT at PLACE in CITY, IL. The ASSOCIATION will engage in the following activities while conducting the event:

1. Sell tickets to the general public (daily/weekly options available)
 - a. Grounds-General access to the grounds of PLACE
 - b. PLACE 1 – General access to the grounds of PLACE & PLACE 1, an air conditioned pavilion featuring live EVENT TV coverage. Food & beverage may be purchased at an additional price.
2. License the exclusive right to use the space occupied by a temporary structure, i.e. tables, tents and suites, for corporate hospitality purposes.
3. Sell clothing, programs & other souvenirs to spectators from temporary structures on the golf course.
4. Sell clothing, programs & other souvenirs to corporate clients via mail order.
5. Sell uniforms to volunteers via mail order.

The ASSOCIATION will contract with an exclusive concessionaire who will provide food & beverages to spectators from temporary structures on the golf course. The ASSOCIATION will obtain a liquor license and hire the exclusive concessionaire to act as agent to sell liquor on the ASSOCIATION's behalf.

The ASSOCIATION will also contract with one or two exclusive caterers who will provide food & beverages to the corporate clients who are using tables, tents and suites for corporate hospitality purposes. The ASSOCIATION will obtain a liquor license and hire the exclusive caterer(s) to act as agent to sell liquor on the ASSOCIATION's behalf.

I am asking that you please review the activities above and let me know the taxability of each.

If you have any questions or need additional information, feel free to contact me.

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 to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. The retailer must pay Retailers' Occupation Tax to the Department based upon its gross receipts, or actual amount received, from the sale of the tangible personal property.

In Illinois, 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for Retailers' Occupation Tax which they are required to and do pay to the Department with respect to the same sale.

An "Illinois Retailer" is one who makes sales of tangible personal property in Illinois. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Persons who promote, organize, or provide retail-selling space for concessionaires or other types of sellers at events such as conventions, county fairs, flea markets and similar exhibitions or events are required to file a report with the Department. Please contact the Department's Special Events Unit for more information. The address and contact telephone numbers are included on the PIO-28, which available on the Department's website.

Section 3 of the Retailers' Occupation Tax Act, 35 ILCS 120/3, provides, in part, "[a]ny person engaged in the business of selling tangible personal property at retail as a concessionaire or other type of seller at the Illinois State Fair, county fairs, art shows, flea markets and similar exhibitions or events, or any transient merchants, as defined by Section 2 of the Transient Merchant Act of 1987, may be required to make a daily report of the amount of such sales to the Department and to make a daily payment of the full amount of tax due. The Department shall impose this requirement when it finds that there is a significant risk of loss of revenue to the State at such an exhibition or event. The Department shall notify concessionaires and other sellers of this requirement. In the absence of notification by the Department, the concessionaires and other sellers shall file their returns as otherwise required in this Section."

Section 2a of the Retailers' Occupation Tax Act, 35 ILCS 120/2a, makes it unlawful for any person to engage in the business of selling tangible personal property at retail in Illinois without first obtaining a certificate of registration from the Illinois Department of Revenue. This applies to all persons whether they sell at conventions, fairs, swap meets, flea markets, and similar exhibitions or events. The Department's business registration form is the REG-1, "Illinois Business Registration Application." This form is available on the Department's website.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i).

This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

Generally, the sale of an admission ticket is the sale of an intangible. Intangible personal property is not subject to sales tax. See 86 Ill. Adm. Code 130.120. If food and beverages are sold separate from the admission price, the sale of that food and those beverages is subject to tax. Similarly, when sales of clothing, programs, uniforms, and other souvenirs are made, the seller is acting as a retailer and is subject to the Retailers' Occupation Tax Act.

For general information regarding vendors of meals (e.g., caterers), please see the Department's Regulation "Vendors of Meals" at 86 Ill. Adm. Code 130.2145. In Illinois, caterers are considered to be retailers of tangible personal property. As a result, tax is imposed on their entire gross receipts from sale, without any deduction on account of service costs or other overhead costs. A caterer's gross receipts would include all receipts associated with the caterer's sale of food and beverages. It is immaterial that service costs associated with the food and beverages are billed separately on the invoice.

As a result, when a caterer contracts to provide food and beverages to a customer, the caterer's gross receipts will include room charges, corkage fees, cancellation fees, fees for special linens, chairs and tables, and chairs, dishes, glasses and flowers. Each of these charges is a part of his overall cost of doing business, and such costs are always includable in his gross receipts. See the Department's regulation "Cost of Doing Business Not Deductible" at 86 Ill. Adm. Code 130.410.

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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,

Debra M. Boggess
Associate Counsel