

An auctioneer acting on behalf of an unknown or undisclosed principal is responsible for Retailers' Occupation Tax on the gross receipts from the sale. However, if the auctioneer is acting on behalf of a known or disclosed principal, the sale of tangible personal property is taxable to the principal and not the auctioneer if the principal is a retailer of the tangible personal property being sold at the auction. See 86 Ill. Adm. Code 130.1915. (This is a PLR).

September 28, 2018

Dear Xxxxx:

This letter is in response to your letter dated July 20, 2018, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

I am writing on behalf of COMPANY which would like to request a Private Letter Ruling Pursuant to Ill. Admin. Code 2 §1200.110 for tax periods MONTH 20XX and forward based on the facts below. COMPANY makes the following representations: COMPANY is not currently under audit and to the best of the Company's or its representative's knowledge, the Department has not previously ruled on the same or similar issue for the taxpayer or a predecessor nor was the same or a similar request made but withdrawn before a letter ruling was issued. Additionally, a duly executed power of attorney appointing me to assist them with their request is enclosed. COMPANY's address is: ADDRESS.

Statement of Relevant Facts

COMPANY is a corporation that sells content and technical solutions to PreK-12 libraries, classrooms and school districts. Recently, COMPANY proposed teaming up with Illinois schools and their Parent Teacher Organizations (“PTO”), which would host book fairs as fund raising events for their school. The fair provides the students, parents and teachers with the opportunity to purchase books from a variety of publishers selected by COMPANY.

Book Fair Specifics

Prior to the event COMPANY’s Coordinator, a COMPANY employee, will work with the school and its PTO to help develop a plan for a successful book fair. The Coordinator will work with the school and PTO to understand certain factors like student ages, number of students, curriculum offered and the student body’s reading capabilities. Based on this and other information the Coordinator will select, from a number of pre-determined options, a book fair plan that fits a particular school or PTO. The book fair plan will outline the number and types of books offered, as well as anticipated sales numbers, which are merely a forecast used for school/PTO planning. Based on the size of the fair, the school or PTO is allowed to select a certain number of tabletop displays from several pre-determined or standard modules. The book selection is determined by COMPANY. The schools cannot customize the title selection, but they can request that certain titles be added if they provide a list of requested titles at least 12 weeks prior to the first day of the book fair. The added titles are generally special interest items like titles that support a summer reading program or titles for an author signing. COMPANY establishes the price for the products, which COMPANY pre-populates into a point of sale (“POS”) system. COMPANY provides the POS system to the school for purposes of recording sales and for processing credit and debit card purchases during the book fair. Parent volunteers run the book fairs. They receive the books, set up the displays, refill book inventory as purchases are made and run the POS system. Receipts generated by the POS system bear COMPANY’s information not that of the school. COMPANY pays the freight cost to ship the book fair items; books, reusable shipping containers, displays, and POS system to the school. It also pays the freight to return the displays, POS system and unsold product in the reusable shipping containers back to COMPANY’s facility after the fair is over. The end customer can either leave the fair with the book he wants to buy or if it is out of stock COMPANY will ship the out of stock books to the school hosting the book fair for subsequent distribution to the end customer.

COMPANY Risks

COMPANY retains title to the books until the end customer: a student, a parent or a teacher purchases the books during the fair. Risk of loss remains with COMPANY prior to the sale to the end customer at the book fair. COMPANY also retains risk of loss on all inventory returned to its facility at the completion of the fair. COMPANY has credit risk related to potential credit card fraud, as COMPANY’s POS system processes all credit card transactions at the fair. All credit and debit card payments processed by COMPANY’s POS system flow directly into COMPANY’s bank account. Onsite

payments made by cash or check to the school or the PTO are also recorded through the POS system. Each end customer, no matter the method of payment, receives a "COMPANY" POS receipt showing the amount paid upon completion of their order. After the book fair closes, the school or PTO completes the "closeout" form to select their reward for hosting the book fair based on sales per the POS system. When the "closeout" has been completed, COMPANY emails a PDF invoice to the school or PTO, which details the amount the school or PTO is required to remit to COMPANY, which is the total of cash and checks collected, net of any cash reward. COMPANY bears the financial risk in the event a school or PTO fails to pay over sales proceeds from cash or check transactions made during the course of the fair.

Benefit for Schools and PTO

At the conclusion of the fair, the school or PTO selects the type of "reward" they would like to receive. The reward is based on the revenue generated by the fair, the fund raising aspect mentioned above. COMPANY provides three options to the school or PTO to claim its reward and the school or PTO may allocate the reward as they like among the three options. The first is "Book Profit" – these are books the school keeps while the fair is onsite. Since COMPANY is giving away the product, COMPANY self-assesses use tax based on the cost of the product. The second option is a "COMPANY Gift Card". The school or PTO may redeem their gift card for product from COMPANY' "WEBSITE" after the event. The taxability of the products acquired through redemption of the gift card is dependent upon the school or PTO's tax status. The third option is a "Cash Reward". The "Cash Reward" is generally provided as a reduction in the amount the school or PTO owes COMPANY for cash or check sales made during the book fair. In other words, the "Cash Reward" allows the school or PTO to retain a portion of the cash or check sales proceeds collected during the course of the book fair. In the instances where the payment due COMPANY at the end of the fair is less than the amount of the cash reward, COMPANY will send a check to the school or PTO for the difference. Although the school or PTO host the book fair and provide volunteers to run the event as a fund raiser, the proceeds, net of any cash reward, are remitted to COMPANY. The school or PTO benefit through the rewards they earn.

Questions Presented

Who is considered the seller of the books to end users at book fairs held in Illinois – the school/PTO or COMPANY? If the seller is the school/PTO, are the book sales to the end user subject to Retailer's [sic] Occupation Tax? If the seller is COMPANY, are the book sales to the end user subject to Retailer's [sic] Occupation Tax? In either case, if the sales are subject to tax, how is the rate of tax determined?

Illinois Law

Under Section 130.1915, receipts from any sale, when made by an agent who is acting for a known or disclosed principal, are taxable to the principal, provided the principal is engaged in the business of selling such tangible personal property at retail. For a sale to qualify under this subsection (a)(2), the principal must be clearly disclosed to the

purchasers by the agent so that the purchasers are able to determine who owns the goods that are being sold.

Under 130.1915(a) every agent, acting for an unknown or undisclosed principal is deemed to be the owner of the tangible personal property, and upon the sale of such property to a purchaser for use or consumption, is required to file a return of the receipts from the sale and to pay to the Department a tax measured by such receipts.

Generally, under Section 130.2005(a)(1)(E) education organizations incur Retailers' Occupation Tax liability when they engage in selling tangible personal property at retail except in three situations:

- A) The first exception is that the sales by such an organization are not taxable if they are made to the organization's members, or to its students in the case of a school. Examples of sales that come under this exemption are sales of uniforms, insignia and Scouting equipment by Scout organizations to their members; sales of Bibles by a church to its members, and sales of choir robes by a church to the members of the church's choirs. The selling organization would incur Retailers' Occupation Tax liability if it should engage in selling any of the foregoing items at retail to the public. However, selling of school books and school supplies by schools at retail to students shall not be deemed to be "primarily for the purpose of" the school which does such selling. Consequently, schools incur Retailers' Occupation Tax liability when they engage in selling school books or school supplies at retail to their students or to others.
- B) The second exception is that sales by exclusively charitable, religious or educational organizations are not subject to the Retailers' Occupation Tax when it can be said that such selling is noncompetitive with business establishments. Specific rules have been established for determining that such selling is noncompetitive, one of which is all of the proceeds must go to the charity.
- C) The third exception is the occasional dinners, socials or other similar activities which are conducted by exclusively charitable, religious or educational organizations or institutions are not taxable, whether or not such activities are open to the public. This exemption does not extend to "occasional" sales, by exclusively charitable, religious or educational organizations or institutions, of hats, greeting cards, cookbooks, flag kits and other similar items because these are not "occasional dinners, socials or similar activities" within the meaning of the Act, and the selling of these kinds of items at retail even on an occasional basis does generally place the selling organization in substantial competition with business establishments.

The Retailers' Occupation Tax Act, 35 ILCS 120, imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. Finally, under Section 220.115(b)(5) the proper taxing jurisdiction is

determined by applying the provisions in subsections (b)(1) and (b)(4), a seller incurs Home Rule County Retailers' Occupation Tax in the county if its predominant and most important selling activities take place in the county.

Conclusion

Please provide us your thoughts to the questions presented above. If you need any additional information to address our questions above, please do not hesitate 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. 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. 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 reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

It is the Department's position that the school and PTO are acting as agents of COMPANY. COMPANY selects the books to be offered at the fair, sets the price for the books, provides the POS system, retains title to the books, and all credit card and debit sales are processed to COMPANY's bank account

Subsection (a)(2) of the Department's regulation, 86 Ill. Adm. Code 130.1915 Auctioneers and Agents, states:

"The receipts from any such sale, when made by an auctioneer or agent who is acting for a known or disclosed principal, are taxable to the principal, provided the principal is engaged in the business of selling such tangible personal property at retail. For a sale to qualify under this subsection (a)(2), the principal must be clearly disclosed to the purchasers by the auctioneer or agent so that the purchasers are able to determine who owns the goods that are being sold."

Your letter states that "[r]eceipts generated by the POS system bear COMPANY's information not that of the school." Also, "[e]ach end customer, no matter the method of payment, receives a "COMPANY's Book Fairs" POS receipt showing the amount paid upon completion of their order." The Department finds that COMPANY is a disclosed principal, and the gross receipts are taxable to COMPANY. COMPANY is responsible for remitting Retailers' Occupation Tax on the book sales. COMPANY also is required to collect Use Tax from the purchasers at the time of purchase.

In response to the Illinois Supreme Court decision in *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, 376 Ill. Dec. 294 (2013), the Illinois Department of Revenue revised the administrative rules

that govern the sourcing of local retailers' occupation taxes. See, for example, 86 Ill. Adm. Code 270.115. The rules provide that:

"The occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price". *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 32 (citing *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943))." 86 Ill. Adm. Code 270.115(b)(2).

A retailer is engaged in the business of selling in only one location for each sale but may be engaged in the business of selling in different locations for different sales. Taxpayers that divide selling activities among personnel located in multiple jurisdictions shall consider the following selling activities to determine where they are engaged in the business of selling with respect to each sale:

- A) Location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale;
- B) Location where the seller takes action that binds it to the sale, which may be acceptance of purchase orders, submission of offers subject to unilateral acceptance by the buyer, or other actions that bind the seller to that sale;
- C) Location where payment is tendered and received, or from which invoices are issued with respect to each sale;
- D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery; and
- E) The location of the retailer's headquarters, which is the principal place from which the business of selling tangible personal property is directed or managed. In general, this is the place at which the offices of the principal executives are located. When executive authority is located in multiple jurisdictions, the place of daily operational decision making is the headquarters.

Based on a review of your letter, the location of the sales personnel with authority to bind COMPANY, the location where COMPANY takes action to bind it to the sale, and the location where payment is tendered and received is the location of the book fair.

"A retailer engaging in three or more primary selling activities in one location in the State after a particular sale shall remit the retailers' occupation tax imposed by the taxing bodies with authority to impose retailers' occupation tax on those engaged in the business of selling in that location." 86 Ill. Adm. Code 270.115(c)(2).

The Department finds that tax on sales made at a book fair is determined by the location of the book fair. This includes sales of books made to purchasers at the book fair and subsequently shipped to the purchaser.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Chairman, Private Letter Ruling Committee

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