

ST 18-0022-GIL 09/13/2018 EXEMPT ORGANIZATIONS

Exclusively religious, educational, or charitable organizations that have been given E-numbers by the Department are allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

September 13, 2108

Dear Xxxxx:

This letter is in response to your letter dated May 2, 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](http://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:

SCHOOL is requesting a ruling on the exemption of collecting and remitting sales tax, for sales made to members of a private school charity, which is a nonprofit service organization.

A. STATEMENT OF FACTS

1. SCHOOL, is a registered public charity under sections 509(a)(1) and 170(b)(1)(vi) of the Internal Revenue code (FEIN #####), assigned Sales Tax Exemption E#####, located at ADDRESS.
2. We are a nonprofit private school, providing education to grades 3-12.
3. We conduct fund raising activities involving sales of products to members of our community. The products are primarily household goods including: food stuffs, personal care items, "gift" type items, etc... These products are purchased in bulk and resold to our members. The work involved in these activities is conducted by unpaid volunteers. All profits from these sales are retained as income to the Corporation.

4. SCHOOL is an integrated auxiliary of CHURCH, in CITY know [sic] as; CHARITY., a registered 501(c)(3) public religious charity (FEIN #####).

#### B. RULING REQUESTED

We are requesting confirmation that the sales of products to our members, for the purpose of fundraising, are exempt of collecting and remitting sales tax.

#### C. STATEMENT OF LAW

We believe the above requested ruling to be in accordance with the law, based on the following excerpts from "Illinois Department of Revenue Regulations | Title 86: Revenue | Part 130 Retailer's Occupation Tax | Section 130.2005".

1. 130.2005, a, 1, A – "...the exemption is not available unless the selling organization or institution does qualify as an "exclusively" charitable, religious or educational organization or institution."
2. 130.2005, a, 2, A – "...sales by such organization are not taxable if they are made to the organization's members... ...primarily for the purposes of the selling organization."

#### D. ANALYSIS

1. We are an "exclusively" charitable, educational organization.
2. Sales are made "to the organization members", "primarily for the purposes of the selling organization".

#### E. CONCLUSION

Based on the above excerpts and statements, we believe we qualify for this exemption.

#### F. PROCEDURAL MATTERS

- a. This issue has not been previously raised at any time by us or any related entity.
- b. This issue has not had a previous ruling which was raised by us, any related entity of predecessor.
- c. This issue has not been previously raised and subsequently withdrawn by us or any related entity.
- d. This issue and/or similar issues have not been previously raised by us or any related entity.
- e. We are not submitting any other ruling requests at this time.

- f. On (2) separate occasions we phoned the Illinois Department of Revenue for comments:
  - i. December 4, 2017 – spoke to NAME 1 # #####
    - 1. We called to review how IL sales tax laws would apply to our fund-raising activities. She brought IL Publication 130.2005 to our attention and reviewed our activities along with sections of this law. Her conclusion was that the sales we make, to our members, for fund-raising, are exempt from collecting and remitting sales tax.
  - ii. January 18, 2018 – spoke to NAME 2 # #####
    - 1. We called to get the above-mentioned comments recorded in writing. He re-reviewed our situation, agreed with the previous comments and directed us to request a letter ruling, if we wanted this in writing.
- g. We are not aware of any contrary authorities to this request.
- h. We do not require a conference on this issue.
- i. Please mail your reply to this request, do not send via fax.
- j. We are not submitting any other requests, for any other issues, at this time.

**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 recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. Based on the limited information you provided in your letter, we hope 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.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E-number"). See 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in

furtherance of their organizational purposes. If an organization does not have an E-number, then its purchases are subject to tax.

Organizations that have E-numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability. Organizations can use their E-numbers to purchase items for such limited exempt sales. However, if organizations engage in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), they must also register with the Department as retailers, file returns and remit tax.

For these types of ongoing sales, the organizations would provide their suppliers with Certificates of Resale for the items they purchase to resell and remit Retailers' Occupation Tax on their gross receipts from sales. See 86 Ill. Adm. Code 130.1405, which describes the requirements for validly executed Certificates of Resale.

The "sales to members" exemption found at 86 Ill. Adm. Code 130.2005(a)(2) is limited to sales by an exclusively religious, educational or charitable organization that are made primarily for the purposes of the selling organization to its members, or students in the case of a school. Please note, the population to which sales are made is limited to persons specifically associated with that exempt organization and must be for the primary purpose of the selling organization. Whether the sales are for the primary purpose of the selling organization depends on the nature of the tangible personal property sold and how that tangible personal property is used. If an organization sells tangible personal property (e.g., household goods such as food stuffs, personal care items and gift-type items) that would place them in competition with other retailers, the sales generally would not be primarily for the purpose of the selling organization.

Under the Department's regulation "Personal Property Purchased Through Certain Fundraising Events for the Benefit of Certain Schools," 86 Ill. Adm. Code 130.2009, the Retailers' Occupation Tax does not apply to the sale of tangible personal property purchased through fundraising events for the benefit of schools or school districts if the events are sponsored by an entity recognized by the school district that consists primarily of volunteers and includes parents and teachers of the school children.

However, the above-stated exemption does not apply to situations in which the fundraising group purchases items from a supplier who sells the items to the fundraising group for the purpose of resale and that profits from the sale to the fundraising group. For example, a parent-teacher association's sale of wrapping paper, holiday goods, and ready-to-sell food products (such as candy bars, nuts, or frozen pizzas) that are purchased from a supplier for purposes of resale, where the supplier makes a profit from the sale to the parent-teacher association, would fall outside the restriction that the items be prepared by or donated to the parent-teacher association. It appears that you are making these types of sales.

In contrast, if the items to be sold are donated to the school, then pursuant to 86 Ill. Adm. Code 130.2009(c), the fundraising group, sponsored by an entity recognized by the school district, may engage in tax-free selling under the Act. For example, these types of sales include bake sales or bazaars selling items that are prepared by or donated to the fundraising group or sales of donated clothes or other items by a fundraising group, provided that the funds go solely to benefit the school.

Notwithstanding that some of an organization's ongoing sales are taxable, such organization may engage in selling tangible personal property at retail to the public at two fundraisers a year without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4).

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M. Boggess  
Associate Counsel

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