

This letter describes a serviceman's liability under the Service Occupation Tax Act. See 86 Ill. Adm. 140.145. This is a GIL.

December 5, 2018

Dear Xxxx

This letter is in response to your letter received November 1, 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:

I had a question concerning the different product pricing in my retail storefront and the summer camps that we host. Basically, we buy these kids' science kits at wholesale for say, \$\$\$. In the storefront, we mark them up to \$\$\$\$, collect the XX% sales tax and sent it to you at the end of the month.

With the summer camps, we charge say, \$\$\$ for each child signed up in the camp. This price includes the cost of the kit which we do not mark up. So, \$\$\$ of the \$\$\$ sign up would be considered non-taxable labor and \$\$\$ would go towards the kit cost. We do collect the XX% tax on the kit as well, but at \$\$\$, not the \$\$\$ we would charge in the retail store.

A person I spoke to at your office said that is was perfectly fine since the kits were being used in different sales situations. Can you please confirm this to me in writing if correct? If not, could you offer a suitable solution (i.e., using kits that we do not carry in the store for the camps, or holding a camp sale price special during the camps?)

We often create our own project for the children using off the shelf supplies such as tongue depressors, tape, wire and small motors. These we just put in the books as supplies. Is it possible to use this method for the kits as well?

I really appreciate your time and help in this matter. Thank you so much.

**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 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. 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 their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois and the seller is not registered to collect Illinois Use Tax, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the businesses providing services (e.g., servicemen) depending upon their activities. For your general information, see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

If a company only performs services and does not transfer any tangible personal property, no tax liability will arise from performing the services.

Hosting camp is analogous to a seminar provider and should be treated in the same manner. Generally, a seminar provider will incur either Service Occupation Tax or Use Tax on all seminar materials transferred during the presentation of a seminar for which a fee or other charge is made for attendance. A servicemen's liability may calculate in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 140.29(b)(1).

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of sales of service. They are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may

qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit tax to the Department by filing returns and do not pay tax to their suppliers. They provide suppliers with Certificates of Resale for the tangible personal property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess, and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

It appears you are registered to collect and remit Retailers' Occupation Tax on your storefront sales. If you qualify as a de minimis serviceman, you could pay Service Occupation Tax on your cost price of the kits and collect the Service Use Tax from your camp attendees. If you qualify as a de minimis serviceman, you would provide your suppliers with Certificates of Resale for the tangible personal property transferred to your camp attendees. See 86 Ill. Adm. Code 140.129(b)(2)(B).

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,

Richard S. Wolters  
Associate Counsel

RSW:bkl