

Exclusively religious, educational, or charitable organizations 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.)

January 8, 2019

Dear Xxxx

This letter is in response to your letter received October 22, 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 am writing to you to request a private letter ruling to exempt our organization, COMPANY, EIN ###, from requiring to charge and remit Retailers' Occupation or sales tax for the sale of snacks to members.

General Information:

1. This Private Letter Ruling ("PLR") is not requested with regard to hypothetical or alternative proposed transactions. This PLR is requested to determine the ROT consequences of the actual business practices of COMPANY.
2. COMPANY is not currently engaged in litigation with the Department in regard to this or any other tax matter.
3. COMPANY is not currently under audit by the Department in regard to this or any other tax matter.
4. The Department has not previously ruled regarding this matter for the COMPANY. In addition, the COMPANY has not submitted the same or similar issue to the Department.
5. COMPANY requests that certain information be redacted from the PLR prior to dissemination to others. COMPANY requests that its name, address, the location of its sales office, the name of its representative, all references to Exhibits, and the Exhibits themselves be redacted.

COMPANY is recognized as a 501c3 non-profit and is exempt from federal and state taxes as the included letters indicate. We are an exclusively charitable organization and will be selling snacks to our registered students, which are junior high and high school

students. No sales will be made to anyone other than registered students, Section 130.2005 1A and Section 130.2005 2A. We also qualify for the exemption under Section 130.2005 3 A because our sales are noncompetitive with current area business establishments. We took great care to make sure we are not selling similar snack items that current businesses are selling. The snack booth will be manned with volunteer members of the organization and all profits will go to the charity.

We plan to sell items such as pizza rolls, corn dogs, soft pretzels, bowls of cereal, fruit, yogurt parfaits, and waffles to members for after school snacks when they come to the COMPANY for after school programming and tutoring.

#### **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. We hope, however, 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.

The Illinois Retailers' Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101.

While organizations that have received an E number are, as a general matter, subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are three limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers' Occupation Tax liability. The limited exceptions available to not-for-profit organizations described in 86 Ill. Adm. Code 130.2005 include: (1) Sales to Members (see 86 Ill. Adm. Code 130.2005(a)(2)); (2) Noncompetitive Sales (see 86 Ill. Adm. Code 130.2005(a)(3)); and (3) Occasional Dinners and Similar Activities (see 86 Ill. Adm. Code 130.2005(a)(4)).

Sales of food by exempt organizations may qualify as exempt noncompetitive sales if they meet all of the requirements of 86 Ill. Adm. Code 130.2005(a)(3) and if the dominant motive of the purchase is the making of a donation to the charitable or religious organization which conducts the sale, rather than the acquisition of property.

Based on the information in your letter, it appears that the dominant motive of the purchase of the snacks by the students is the acquisition of the food rather than the exchanging of the snacks

merely as a token for the making of a donation. 86 Ill. Adm. Code 130.2005(a)(3)(E). In addition, it appears that sales of the snacks would be competitive with surrounding business establishments. 86 Ill. Adm. Code 130.2005(a)(3)(A).

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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