

The sale of comic books which are published at least bi-annually is exempt from Retailers' Occupation Tax under the newsprint and ink exemption. However, a comic book sold as a collector item rather than as newsprint and ink in its initial sale, will be subject to Retailers' Occupation Tax based upon the gross receipts from the sale. See 86 Ill. Adm. Code 130.1910. (This is a PLR.)

January 10, 2019

Re: Taxpayer ID ### - Private Letter Ruling Request – COMPANY

Dear Xxxx

This letter is in response to your letter received November 13, 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:

STATEMENT OF FACTS

COMPANY ("Taxpayer") is a retailer engaged in the sale of comic books, collectables, role-play gaming supplies, hard cover graphic novels and other miscellaneous items. A significant percentage of its sales relates to comic books which are published periodically.

Unlike other magazines and newspapers, unsold comic books are non-returnable and so are held and later sold at market value which is either cover price, discount to cover price or premium to cover price. There are literally thousands of comic books in inventory at any one time and other than the weekly ('new') comic books, they are carried in inventory based on their weighted average cost.

Retailer's [sic] occupation tax ("Sales Tax") is not collected on new comic books or on older comic books sold at either cover price or discount to cover price. Sales Tax is collected on comic books sold at a premium to cover price.

ISSUE

It was suggested by the District 4 Revenue Collection Officer that Taxpayer request a private letter ruling regarding the duty of Taxpayer to collect Sales Tax on comic books that are older than the current editions but not sold at a premium to cover price.

The above issue regards calendar years 2016 to present. To the best knowledge of Taxpayer the Department has not previously ruled on the same or a similar issue for the Taxpayer or a predecessor.

APPLICABLE LAW

The sale of comic books are generally covered under the Newsprint Exception Title 86 Part 130 Section 130.2106(a);

Sales of newspapers and magazines are not subject to the tax because of the newsprint and ink exemption. In determining whether a publication qualifies as a magazine for the purpose of the newsprint and ink exemption, there is one test that must be met and several other factors to be considered. The test that must be met for a publication to qualify as a magazine is that it must be published periodically in the form of newsprint and ink. Periodically means at least two times per year.

The other factors to be considered are whether a member of the public can subscribe to the publication, whether the publication is one that has the basic format of a magazine, including soft covers, individual pages and indexed articles, whether it contains articles and items that have value to the general public, and whether it contains general advertising. A publication has one or more of these characteristics would be considered to be a magazine, assuming the initial test of periodic publication is met.

Further, Illinois Department of Revenue Regulations, Title 86 Part 130 Section 130.1910(e)(1) specifically includes comic books under the newsprint exception. "Comic books that are published and sold as current serial publications are exempt from Retailers' Occupation Tax as newsprint and ink."

However, pursuant to Title 86 Part 130 Section 130.1910(e)(2);

Comic books sold as collectors' items rather than as newsprint and ink are subject to Retailers' Occupation Tax. For example, old comic books sold at conventions that are not current serial publications are subject to tax.

Taxpayer has found no authorities relevant to this issue other than identified above.

ARGUMENT

It is industry practice not just for comic book retailers but for retailers of other magazines and newspapers to apply the newsprint exception to all current publications. It is also industry practice, where older publications are sold (before they are returned for credit) to apply the newsprint exception to those older publications. There is no discernable methodology for Sales Tax purposes to distinguish between current and older publications sold off the rack for cover price.

A collectible is an item that is worth more than it was originally sold for because of its rarity and/or popular demand. While that definition can certainly apply to some comic books or, for that matter, to other magazines; it is not necessarily analogous to whether the issue is current.

While uncommon, it is not unprecedented that a current issue will immediately increase in value due to popularity or reduced print run. Older issues [after the current issue] are kept on the rack not because they are collectable but because they are part of serial stories and are not time sensitive to customers. They maintain the same utility as current issues.

Of the factors to be considered pursuant to the Newsprint Exception, **none of those factors regard the age of the publication.** In fact, since the exception specifically applies to publications that are published at least two times a year, a magazine can sit on the rack for six months and be allowed applicability to the Newsprint Exception.

The example in Regulation Title 86 Part 130 Section 130.1910(e)(2) specifically excludes from the Newsprint Exemption "Comic books sold as collectors' items rather than a newsprint and ink." Unsold comic books on the rack are not sold as collectables, but rather as newsprint and ink at their cover price. As previously stated, where comic books become collectable and sell at a premium; whether current or older, Taxpayer collects Sales Tax on the sale.

CONCLUSION

Taxpayer respectfully requests a private letter ruling that comic books which are superseded by current issues, but which continue to be sold at cover price, or at a discount from the cover price, be subject to the Newsprint Exception to Retailer's [sic] Occupation Tax under Title 86 Part 130 Section 130.2106(a).

DEPARTMENT'S RESPONSE:

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.

Retailers who engage in retail sales of newspapers and magazines incur no Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2105. Court cases and letter rulings have interpreted this regulation to include comic books, crossword puzzle books, word search books, and other publications which are issued at least biannually. As long as the comic books that you are selling are currently published at least twice a year, you will not incur Retailers' Occupation Tax liability on the retail sale of the comic books. In contrast, however, comic books sold as collector items will be subject to Retailers' Occupation Tax based upon the gross receipts from the sale. See 86 Ill. Adm. Code 130.1910.

Based upon the information in your letter, it appears that you are taxing the various sales of your comic books correctly.

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 concerning this Private Letter Ruling, you may contact me at (217) 782-2844. 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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