

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101 et seq. (This is a GIL.)

May 17, 2022

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated July 7, 2021, 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.

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:

REQUEST FOR GENERAL INFORMATION LETTER (GIL) REGARDING TAXABILITY OF BUSINESS

The company provides walking outdoor BUSINESS. The TRIPS do not provide access to any areas requiring an admission charge and do not provide access to any areas that are not otherwise open to the public. Aside from the TRIP itself, no other amusements, sports, or entertainment are part of the walking TRIP.

The TRIPS regularly make stops at various 3rd party unrelated restaurants and bars ("establishments") that serve food and/or alcoholic beverages. In some instances, the TRIP price does not cover any food or drink consumed by TRIP participants in these establishments during the TRIP stop. However, in other cases, the sales price of the TRIP covers food and beverages (including alcoholic beverages) consumed on the premises of the 3rd party establishment during the TRIP stop.

The sales price for the TRIP, food, and beverages are typically billed as a lump sum. However, there will be instances where the charge for alcoholic beverages consumed on the premises of the 3rd party establishment during the TRIP stop will be billed separately as an "add-on." The company providing the TRIP will pay each 3rd party establishment for all food and beverages (including alcoholic beverages) consumed by TRIP participants during a TRIP stop. All food and drinks (including alcoholic beverages) are consumed on the premises of each 3rd party establishment visited during a TRIP stop.

Questions:

1. Are these outdoor walking BUSINESS subject to sales/use tax or any other state/local tax when the sales price DOES NOT include food and beverages consumed during a TRIP stop?
2. Are these walking BUSINESS subject to sales/use tax or any other state/local tax when the sales price INCLUDES food and beverages consumed during a TRIP stop?
3. If the TRIPS that includes food and beverages consumed during TRIP stops are subject to state/local tax, can the TRIP operator purchase all food and beverages from the restaurants and bars tax-free by issuing a valid resale certificate?

Please reach out to NAME at the number below if you need to discuss, or you may email NAME at E-MAIL

Thank you in advance for your assistance.

DEPARTMENT'S RESPONSE:

Retailers' Occupation Tax and Use Tax

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.

Service Occupation Tax

Illinois also imposes a tax upon persons engaged in this State in the business of making sales of a service, based on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. The transfer of tangible personal property to service customers may result in either Service Occupation Tax liability or

Use Tax liability for servicemen, depending upon which tax base they choose to calculate their liability.

Retailers' Occupation Tax and Use Tax do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services (i.e., servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The serviceman's liability may be calculated in one of four ways:

- 1) Service Occupation Tax on the separately stated selling price of tangible personal property transferred incident to service;
- 2) Service Occupation Tax on 50% of the serviceman's entire bill;
- 3) Service Occupation Tax on the serviceman's cost price if the serviceman is a registered de minimis serviceman; or
- 4) Use Tax on the serviceman's cost price if the serviceman is de minimis and is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

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. Under both methods, the tax base cannot be less than the cost price of the tangible personal property transferred. Servicemen using either of these methods must provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of sales of service. These servicemen are also 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 must pay Service Occupation Tax (including local taxes) on the cost price of tangible personal property transferred incident to sales of service. De minimis servicemen incurring

Service Occupation Tax on their cost price must provide suppliers with Certificates of Resale for the tangible personal property transferred to service customers. These servicemen must also collect the Service Use Tax from their 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. 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. These servicemen are the end users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from their service customers. See 86 Ill. Adm. Code 140.108.

The provision of services such as, for example, a walking tour, that does not include the transfer of tangible personal property with the provision of such services does not result in Service Occupation Tax or Use Tax liability. The transfer of any tangible personal property such as, for example, food for immediate consumption and alcoholic beverages, incident to a sale of service would be subject to liability under one of the four methods described above.

Resale

When an Illinois retailer sells tangible personal property and delivers it in Illinois, sales tax is due unless an exemption can be documented. The resale exemption is applicable when making sales to a purchaser who will in turn sell the tangible personal property (or transfer the tangible personal property incident to a sale of service that is taxable under the Service Occupation Tax Act). For general information regarding resale certificates, see the Department's regulation for resale certificates, "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale," at 86 Ill. Adm. Code 130.1405. If an electronic resale certificate is kept, it should contain all the information required under 86 Ill. Adm. Code 130.1405.

A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. In addition to the statement, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;

- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing; and
- 5) Registration Number, Resale Number, or Certification of Resale to out-of-State Purchaser.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all the seller's sales are sales for resale, or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois. The risk run by companies accepting such a certification and purchasers providing such a certification is that an Illinois auditor is more likely to go behind a certificate of resale that does not contain a signature and require more information be provided as evidence the sale was, in fact, a sale for resale.

If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Thomas Grudichak
Associate Counsel

TG:rkn