

ST 24-0011-GIL 03/12/2024 GROSS RECEIPTS

“Gross receipts” means all the consideration actually received by the seller, except traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold. 86 Ill. Adm. Code 401 & 425. (This is a GIL.)

March 12, 2024

NAME
COMPANY
ADDRESS

Dear NAME:

This letter is in response to your letter dated February 8, 2024, 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 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 has declined your request for a PLR. A private letter ruling will not be issued if there are regulations dispositive of the subject of the request. 2 Ill. Adm. Code 1200.110(a)(3)(D). The Department has decided to issue a general information letter. In your letter you have stated and made inquiry as follows:

I am writing on behalf of COMPANY, a renowned retail conglomerate specializing in gold, diamond, platinum, pearl, and precious stone jewelry, with its principal place of business located at ADDRESS, USA, and Employer Identification Number (EIN) XXXX. Our contact person for this matter is REPRESENTATIVE CPA, who can be reached at EMAIL or PHONE.

We respectfully request a Private Sales Tax Letter Ruling on a matter pertaining to the application of sales tax on trade-in deductions.

Facts:

In the world of fashion, jewelry holds a significant role, and our valued customers often choose to exchange their outdated jewelry for newer pieces. As a retailer specializing in gold, diamond, platinum, pearl, and precious stone jewelry, we recognize that the old jewelry received during these transactions is not suitable for resale in its current state

due to its outdated styles. We typically melt down the old gold jewelry to create gold bars, which are then sold to wholesalers. The issue in question arises from the exchange of old jewelry, primarily gold and diamond pieces, for new merchandise, and whether the customer is eligible for a sales tax credit when engaging in such transactions.

Furthermore, on December 1, 20XX, the State of STATE has issued a Letter Ruling in this matter to COMPANY1. allowing them to deduct the value of the old jewelry being traded-in from the taxable sales price of the new jewelry. We are attaching the said Letter Ruling with this request for your perusal.

Scenario:

1. The company acquires old jewelry, such as gold and diamond pieces, from customers.
2. The credit from this trade-in is applied toward the customer's purchase of new jewelry merchandise.
3. Old gold jewelry, due to its outdated nature, is melted down to form gold bars, which are subsequently sold to wholesalers.
4. At present, we do not provide sales tax credits for trade-ins to our customers, as we do not offer the option of exchanging old jewelry.
5. On December 1, 20XX, the State of STATE has issued a Letter Ruling in the same matter to COMPANY1. We are requesting a similar Letter Ruling for COMPANY.

Disclosure:

COMPANY is not currently involved in any ongoing matters related to this issue concerning the taxpayer's return for a previous period. No issues are under examination as part of a Department audit, and there are no pending litigations in which the Department is named as a plaintiff or defendant concerning the taxpayer or related entities.

We hereby affirm that the facts and scenario presented herein are accurate to the best of our knowledge, and the Department has not previously issued a ruling on the same or a similar issue for the taxpayer or any predecessors, representatives, nor have we previously submitted a request on the same or a similar issue to the Department that was subsequently withdrawn before a letter ruling was issued.

We kindly request the Department's guidance and clarification on whether customers are eligible for sales tax credits when they trade in their old jewelry for new merchandise as described in the scenario outlined above.

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, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

The tax imposed by the Retailers' Occupation Tax Act is at the rate of 6.25% of gross receipts from sales of tangible personal property made in the course of business. 35 ILCS 120/2-10. "Gross receipts" from the sales of tangible personal property at retail means the total selling price or amount of such sales. "Selling price" or the "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but, prior to January 1, 2020 and beginning again on January 1, 2022, not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold. 35 ILCS 120/1; 86 Ill. Adm. Code 130.425.

The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale, where the item that is traded-in is of like kind and character as that which is being sold, shall not be considered to be "gross receipts" subject to the Retailers' Occupation Tax and need not be included in the seller's return, or may be deducted in the return from gross receipts if included in gross receipts as reported in the return. 86 Ill. Adm. Code 130.425(e).

The real test of whether a traded-in item is of "like kind and character as that which is being sold" and would, therefore, not be gross receipts subject to the Retailers' Occupation Tax, is whether the retail sale of the traded-in tangible personal property by the person who accepts it in trade would be subject to Retailers' Occupation Tax, or whether such sale would be exempt as an isolated or occasional sale. 86 Ill. Adm. Code 130.425(d). The Department generally construes "like kind and character" broadly. For example, as a jeweler, you may accept a ring as a trade-in on a simultaneous purchase of a bracelet, since you would be subject to Retailers' Occupation Tax on the ring if you sold it at retail, regardless of whether you, in fact, resell it after accepting it in trade.

I hope this information is helpful. 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,

Richard S. Wolters
Associate Counsel