

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.)

September 24, 2008

Dear Xxxxx:

This letter is in response to your letter dated June 6, 2008, in which you request 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:

This is a request for confirmation that the sales tax exemptions applicable to certain sales by exclusively charitable, religious or educational organizations and institutions also apply to certain sales by units of local government.

The sales tax exemptions I refer to are discussed in 86 Adm. Code 130.2005. Said section 130.2005 does not address units of local government. In a GIL dated May 4, 2007 (copy enclosed), Associate Counsel Mote includes government organizations with charitable and educational organizations which may conduct some sales tax free.

I note that 86 Adm. Code 130.2055 does not cross reference the exemptions under Section 130.2005.

Do the rules for exempt sales under Section 130.2005 apply to sales by units of local government?

Are there other regulations which address exemptions of sales by units of local government?

Thanks for your help.

DEPARTMENT'S RESPONSE:

Organizations that qualify as exclusively religious, charitable, or educational organizations can apply to the Illinois Department of Revenue to obtain a tax exemption identification number. These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. While organizations and institutions that are both operated and organized exclusively for charitable, religious, or educational purposes are as a general matter subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers' Occupation Tax liability. Exclusively charitable, religious and educational organizations that hold exemption numbers may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities without incurring Retailers' Occupation Tax liability. 86 Ill. Adm. Code 130.2005(a)(2)-(4).

Section 130.2055(a) of the Code provides that "the State of Illinois or any local governments in Illinois, or any agency or instrumentality of any such government body, incurs Retailers' Occupation Tax liability when it engages in the selling of tangible personal property at retail to the public other than in the performance of a governmental function." The reason for this rule is to ensure that governmental units do not have a competitive advantage when selling items that are also sold by Illinois retailers.

An example of sales that may be made by a governmental body to the public that involves the performance of a governmental function is the sale of motor vehicle license plates by the State of Illinois. Where a governmental unit makes sales that are not in the direct performance of its governmental function, the sales are taxable. Examples of taxable sales by governmental units include the operation of concession stands by park districts, sales of smoke detectors by fire protection districts, sales of leaf bags by municipalities, sales of T-shirts, caps and mugs by State agencies, sales of books by libraries, and sales of books and supplies by school districts to students.

Under very limited circumstances government organizations are included within the scope of certain provisions of Section 130.2005. Subsection (k) provides as an example of an exempt buyer "free public libraries that are not operated by commercial enterprises (whether such libraries are governmental units or not)." Subsection (l)(4) states that "the exemption for educational purposes includes private schools (such as parochial grade and high schools, private colleges and the like) as well as government-owned tax-supported schools so long as the institution qualifies as a school as" described in the regulation. "Government-owned hospitals are deemed by the Department to be organized and operated exclusively for charitable purposes within the meaning of this Section [130.2005]." 86 Ill. Adm. Code 130.2005(m)(5). Except in these very limited circumstances where a government organization expressly falls within the scope of certain provisions of Section 130.2005, Section 130.2005 does not apply to the sales of tangible personal property by a local government, regardless of whether the local government may possess an "E" number from the Department.

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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk