

This letter discusses the tax consequence of reward credits. See 86 Ill. Adm. Code 130.401(c).
(This is a GIL.)

November 18, 2008

Dear Xxxxx:

This letter is in response to your letter dated January 17, 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:

Background

We are a direct sales company that markets items exclusively through independent distributors. Distributors recruit hostesses to hold home parties. A hostess holds a sales party for her friends and relatives in her home where the company's products are demonstrated and sold. The hostess earns 'hostess dollars' depending on sales made at the party. These dollars become worthless if the hostess does not use them on the order form she submits for that sales demonstration. The hostess is not permitted to assign the 'hostess dollars' discount to another person, nor may she use it to pay applicable sales taxes or shipping charges due on her purchase of products.

Hostess orders may include one or more customers, and contain promotional items for the hostess known as hostess benefits (hostess dollars and hostess free gifts). Distributors submit to the corporation the sales tax for remittance to the state. These orders may be shipped to customers, distributors, or hostesses.

Issue

- The hostess dollars are a credit based on sales of the party that must be used when the party order is placed. If not used by the hostess, the hostess dollars are lost. Should our client collect sales tax on the gross amount (entire sales price of items purchased including hostess dollars) or the net amount (entire sales price

of items purchased less the hostess dollars) thereby treating the hostess dollars as a trade discount?

In New Jersey, the court held hostess dollars to be considered as coupons which were used as credit against the sale price of a product so as to render it free to the customer and not subject to sales tax. Since the hostess credit in this case can be used towards purchase or in exchange for company product (i.e. it has no monetary value in the marketplace), it is similar to a non-reimbursable store coupon. *Burger King Corp. v. Director, Division of Taxation*, 9 N.J. Tax 251 (Tax Ct. 1987, aff'd. 224 N.J. Super. 628 (App. Div. 1988))

If you have any additional questions concerning this issue, please contact me.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in the business of selling tangible personal property at retail. The rate is 6.25% of gross receipts for most items, and a lower rate of 1% for qualifying food, drugs and medical appliances.

The base for sales tax on a retail sale of tangible personal property to a customer would be the amount of gross receipts received from the customer for the sale. For example, if an item is sold to the customer for \$20.00, the tax base would be \$20.00, even though the representative remits only the wholesale price amount to the company. See the Department's regulation at 86 Ill. Adm. Code 130.401(c) for some guidance.

Section 130.401(c) provides that "[r]eward credits, sometimes referred to as hostess dollars, awarded to a host or hostess for sponsoring a party for friends at which sellers may show and solicit orders for their merchandise, and which are awarded based upon the amount of sales generated at the party, are included in gross receipts subject to tax when applied toward purchases of the seller's merchandise. The value of the reward credit equals the dollar amount credited when the reward credit is applied."

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,

Debra M. Boggess
Associate Counsel

DMB:msk