

A retailer maintaining a place of business in Illinois must collect tax from users in accordance with the Retailers' Occupation Tax Act and the Use Tax Act by adding the tax to the selling price of tangible personal property, when sold for use. See 86 Ill. Adm. 150.401.

June 25, 2015

Dear Mr. XXXX:

This letter is in response to your letter dated April 2, 2015, 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:

General Information:

- 1) I am an Officer of the company, COMPANY and am authorized to represent the company before the Illinois Department of Revenue.
- 2) The Private Letter Ruling ("PLR") is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailers' Occupation Tax consequences of the actual business practices of the Company.
- 3) The Company is not currently under audit by the Department in regards to this or any other tax matter.
- 4) To the best of knowledge of the Company has not previously ruled regarding this matter for the Company. In addition, the Company has not submitted the same or similar issue to the Department.
- 5) The Company is not currently engaged in litigation with the Department in regards to this or any other tax matters.
- 6) The Company is not aware of any authority contrary to the authorities referred to and cited below.

Statement of Material Facts

- 1) The Company is in the process of opening its first store in CITY, Illinois (COUNTY).
- 2) The Company is part of a group of companies that include a Manufacturing/Wholesale Company.

- 3) The Company will acquire all of its inventory from the Manufacturing Company. Substantially all of these products will be private labeled as to the manufacturing Company.
- 4) The Company's store will be open to the customers of the Manufacturing Company to purchase goods at wholesale prices. These customers will be required to present a valid Reseller's Certificate and not be subject to Sales Tax. The Company will also open the Store to the general public, to purchase the same goods at retail prices. Sales to the public are being offered as a way to enhance the product name and increase demand for the Manufacturing product line.
- 5) The Company will display two prices on the shelf for each product, the Wholesale price and the retail price.
- 6) The Company desires to pass along additional savings to the Retail customer by offering them the ability to pay the Wholesale prices, with the payment of a membership fee. The membership fee is based on a percentage of the savings of the retail customer.
- 7) At the checkout, the Retail customer will be presented with the total of their purchase at retail pricing. They will also be shown that the total of their purchase would be at wholesale pricing along with the amount of the membership fee to be paid to obtain the favorable pricing. If they choose not to take advantage of the offer, the sale will continue at full retail pricing. If they choose to pay the membership fee, the sale will be concluded at wholesale pricing and the membership fee will be added to their purchase.
- 8) The receipts will not show any Sales Tax charged to the Retail customers at Wholesale price plus membership fee.
- 9) The company will pay the Sales Tax ourselves base on the gross receipts without charging our customers Sales Tax on the Company Sales Tax return.
- 10) We would really appreciate if the Department can expedite the PLR at your earliest convenience.
- 11) The store is scheduled to be opened in the next XX to YY days.

Ruling Requested

The Company requests the Illinois Department of Revenue to rule that it is legal for the Company not to collect Sales Tax from our customer and the Company will pay all Sales Tax required from the Sales.

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. 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 86 Ill. Adm. Code 150.101.

Please note that this response is limited to your question regarding the collection of sales tax from customers. This response does not make any representations regarding any of the other items listed in your statement of material facts. Your letter states that receipts for the sale of tangible personal property will not show any sales tax charged to the customer. We suggest that you refer to 86 Ill. Adm. Code 150.401 which states that it will be assumed that the seller is not collecting the tax if he/she does not state it as a separate item from the selling price of the tangible personal property. Furthermore, your letter states that the company will pay the sales tax without charging customers sales tax. This is improper. A retailer maintaining a place of business in Illinois must collect tax from

users in accordance with the Retailers' Occupation Tax Act and the Use Tax Act by adding the tax to the selling price of tangible personal property, when sold for use. See 86 Ill. Adm. 150.401.

It has also come to our attention that you are advertising that merchandise at your store is "Tax-Free to the Public." Please consider this letter as fair notice that this conduct violates the provisions of the Use Tax Act. Section 35 ILCS 105/3-45 of the Use Tax Act requires Illinois retailers to collect the Use Tax from purchasers by adding the tax to the selling price of the tangible personal property when sold for use. Section 7 of the Use Tax Act states:

It is unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by Section 3 hereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded other than when the retailer refunds the selling price and tax because of the merchandise's being returned to the retailer or other than when the retailer credits or refunds the tax to the purchaser to support a claim filed with the Department under the Retailers' Occupation Tax Act or under this Act. Any person violating any of the provisions of this Section within this State shall be guilty of a Class A misdemeanor. See 35 ILCS 105/7.

As indicated above, it is a class "A" misdemeanor for a retailer to advertise that it will pay the taxes applied to a purchase. Please refer to 86 Ill. Adm. Code 150.515 that describes this statutory prohibition. While we do not want to interfere with your advertising techniques, under the circumstances, we are compelled to do so. You should immediately cease advertising "Tax-Free to the Public." Any future advertisements of this kind will be viewed as a continuing violation, which could result in criminal prosecution.

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,

Cara Bishop
Associate Counsel

CB:kd

