

This letter discusses how employee meals are taxed. See, 86 Ill. Admin. Code 130.2050. (This is a GIL.)

December 31, 1998

Dear Sir or Madam:

This letter is in response to your letter dated September 23, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

It was recommended to us upon calling the toll free number for the State Controller's Office to write and ask for written response to our question. We are the accountants for several fast food franchise units in the state of Illinois. We have questions regarding our policy with regard to computing sales tax and we need clarification on the matter,.

First of all, our understanding is that the sales tax must be paid by the end user when all the parts are 'assembled' and the product is complete. It follows then that if the product is never 'sold' then you become the end user and therefore owe the tax. A specific example: if a sandwich is made and then has to be thrown out or if food is old and has to be written off as waste, then you have become the end user. Our understanding is that the business is liable in this instance as the consumer or use of the product and therefore subject to tax on the cost of the food products used. Is this the rule with regard to the state of Illinois?

The other questionable item is employee meals. This includes two categories: 1) meals sold at a discount and 2) meals given to the employee. Our understanding is that the meals sold at a discount should be taxed at the sales price and that the meal given away should be taxed at cost.

Please clarify the computation of sales tax on both these issues.

Should you have further questions, please feel free to contact ####.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1996 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased anywhere at retail from a retailer. 35 ILCS 105/3 (1996 State Bar Edition). These taxes comprise what is commonly known as "sales" tax in Illinois. The tax rate under both tax Acts is 6.25%.

PURCHASES FOR RESALE

If persons purchase tangible personal property in Illinois for resale, and not for use or consumption, the purchasers can obtain that property without incurring tax by providing their suppliers with Certificates of Resale. Certificates of Resale are valid if they contain the information set out in the enclosed copy of 86 Ill. Adm. Code 130.1405. Persons may also provide blanket Certificates of Resale which are valid if they conform to the requirements of Section 130.1405.

If tangible personal property that has been purchased tax-free for resale is not sold, but is instead used or consumed, the purchaser incurs a Use Tax liability on the cost price of that tangible personal property. For example, if tangible personal property is purchased for resale and is instead discarded or otherwise used by the purchaser, the purchaser is considered to have made a use of that property and incurs a Use Tax liability on the cost price of that property. See generally the enclosed copy of 86 Ill. Adm. Code 150.201.

EMPLOYEE MEALS

When employers furnish free meals to employees rather than charging their employees for such meals, those employers incur a Use Tax liability on the cost price of the food that is consumed. The base (cost price of the food that is consumed) upon which this Use Tax is calculated, in the absence of evidence establishing a lower figure, is presumed to be 75 cents per meal. See subsection (c) of the enclosed copy of Section 130.2050. Food used in such employee meals is subject to the low 1% rate (plus any applicable local taxes). The low tax rate applies to this food because it constitutes food used by the employer, rather than food purchased by the employer for resale and sold for immediate consumption (the latter is taxable at the high rate - 6.25% plus any applicable local taxes).

If employers charge for employee meals, they incur Retailers' Occupation Tax on the gross receipts received from such sales, even if the sales are at a discounted price. The high rate of tax (6.25% plus any applicable local taxes) applies to these sales, since the employer is selling food for immediate consumption.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Encl.