

Generally, seminar, training session, or continuing education providers incur Retailers' Occupation Tax on the gross receipts from sales in Illinois of seminar, training, or continuing education manuals such as workbooks, reference books, and outlines. (This is a GIL.)

December 31, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated July 21, 1998. We regret the delay in our response. 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:

Our accounting firm represents a corporation that organizes and markets continuing education seminars throughout the United States. We have several questions concerning the taxability of registration fees and direct mail advertising materials. Following is a brief overview of the Corporation's activities and a list of the questions we would like responses for.

Description of Activities

The Corporation arranges professional education seminars for attorneys, certified public accountants and similar professionals throughout the country. In doing so, the Corporation arranges for independent speakers to present these seminars and hotel conference rooms in which to conduct the seminars.

Once a speaker, topic, and location has been arranged, the Corporation solicits an audience through a direct mailing of advertising brochures. The brochures are developed, printed, and mailed from the Corporation's home state. Seminar attendees send in a check and a registration form in response to the direct mailing. At no time are the Corporation's employees present in your state at the seminars or elsewhere to solicit seminar attendance. All solicitation is done by direct mail. Physical presence of personnel in your state is limited to the independent speakers who present the seminar and personnel from a temporary service company who are contracted to provide check in of registrants at the seminar and to hand out the seminar materials.

Once an audience has been solicited, the Corporation arranges for the attendees to receive copies of the speaker's outline for the seminar.

These outlines are prepared by the independent speakers who present each seminar and are printed and bound in the Corporation's home state. The outline/manual is then mailed directly to the seminar location to be handed out to the seminar attendees.

Given the above description of the Corporation's activities in your state, our questions concerning the application of your sales and use tax regulations are as follows:

1. Are the registration fees for the continuing education seminars subject to sales tax in your state?
2. If the registration fee is not subject to sales tax, is the value of the speaker's outline/seminar manual provided to attendees subject to a use tax?
3. If the provision of the outlines/manuals is subject to a use tax, how should the value be established?
4. Is there a use tax on the mailing of the advertising brochures, and if so, how should the value of those brochures be established? The purchase of mailing lists is the largest cost of preparing the brochures, in addition to the various costs of postage, paper, ink, printing supplies, etc.
5. If there is a use tax on the direct mailing of advertising brochures, is there a De Minimis threshold to establish nexus for the use tax?

Please be as detailed as possible in your response. If you need further information on which to base your response, please contact me for clarification of the issues.

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 at retail from a retailer. 35 ILCS 105/3 (1996 State Bar Edition).

An Illinois retailer is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois retailer is liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by purchasers.

The definition of a "retailer maintaining a place of business in Illinois" is set forth at 86 Ill. Adm. Code 150.201(i), see enclosed. An out-of-State retailer maintaining a place of business in this State is required to register with the State as an Illinois Use Tax collector. See the enclosed copy of 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of its Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The final type of retailer is simply the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax law.

A retailer in this situation does not incur Retailer' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's sales tax laws. The Supreme Court has set out a two-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due Process will be satisfied if the person or entity purposely avails himself or itself of the benefits of an economic market in a forum state. *Id.* at 1910. The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause.

A physical presence does not mean simply an office or other physical building. Under Illinois tax law, it also includes the presence of any representative or other agent of the seller. The representative need not be a sales representative and it is immaterial for tax purposes that the representative's presence is temporary.

Generally, seminar, training session, or continuing education providers incur Retailers' Occupation Tax on the gross receipts from sales in Illinois of seminar, training, or continuing education manuals such as workbooks, reference books, and outlines. The sales of these items are subject to Retailers' Occupation Tax whether the items are sold separately or as part of the total tuition charge for the seminars. If the books and outlines are sold as part of the total tuition charge, the providers must allocate the amount for the selling price of the books and charge tax on that amount.

When a company contracts for the production of custom printed literature, a special order printing situation exists and liability is incurred under the Service Occupation Tax Act. See 86 Ill. Adm. Code 130.2000 and 140.101, enclosed.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered *de minimis* servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are *de minimis* and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If the servicemen do not wish to separately state the selling price of the tangible personal property transferred, the servicemen must use 50% of the

entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Serviceman may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to the sale of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. The servicemen are not authorized to collect "tax" from their service customer nor are the servicemen liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Admission charges to conferences and seminars are generally not subject to Retailers' Occupation Tax or Service Occupation Tax. However, please note that such taxes are generally applicable when materials such as written texts are provided to attendees at the conferences.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. 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,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.