

Gross receipts are defined as all the consideration actually received by a seller from whatever source, except traded-in tangible personal property. See 86 Ill. Adm. Code 130.401. (This is a GIL.)

September 5, 2001

Dear Xxxxx:

This letter is in response to your letter dated May 7, 2001. 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 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's Web site at www.revenue.state.il.us/legalinformation/regs/part1200.

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

AAA is a STATE-based developer of supply chain management software solutions. As such, our system must support the sales tax regulations of each state in which we plan to market our applications. We have some questions regarding Illinois Retailers' Occupation Tax.

Title 86/Part 130: Revenue--Retailers' Occupation Tax implies that the taxability of all or part of a given transaction will depend upon the manner in which a supplier funds retailer-directed promotional activity and how discounts are presented to the customer. Specifically, it appears that Section 130.2125, Sub-Section b-2-B qualifies Sub-Section b-2-A. Please find below an outline of how retailers might receive funding from suppliers and how they might use this funding to drive in-store promotional activity. We would like you to render a legal opinion regarding how the various permutations of each determine the taxability of all or part of a retail sale.

In all cases, what supplier reimbursement exists is the result of a contractual negotiation during which the supplier and retailer agree upon how the retailer is to receive its promotional funding. Options include:

- A per-case, off-invoice purchase discount for a specified period of time.
- A per-case rebate for each case purchased from the supplier for a specified period of time.
- A per-unit rebate for each item sold at retail for a specified period of time.
- A per-unit rebate for each item sold at retail at a discounted price for a specified period of time.
- A lump sum payment for any and all promotional activities relating to an item or items. (E.g. Inclusion of product in an advertisement, reduction of retail price,

building of an in-store display, increase in allocated shelf space, issuance of an in-store coupon, etc.)

Often, the retailer has a choice as to how they would like to receive funds from a supplier. For example, they might choose to receive \$2.40 purchase discount or rebate, a 15¢ rebate for each unit sold, a 20¢ rebate for each unit sold at a discount for a specified period of time, or possibly a \$2,400 lump sum payment.

If the retailer chooses to channel any portion of the supplier monies to cost of goods it may also decide to offer a discount to the customer. This discount may also take one or more various forms:

- A reduced retail offered to all customers.
- A reduced retail offered to those customers presenting a frequent-shopper card.
- A reduced retail offered to only specific customers via a retailer-issued paper coupon or a reduced retail automatically calculated at the point of sale.
- A reduced retail on another item or a discount on the customer's entire order. (May be offered to all customers, all-frequent shoppers, or specific customers.)

In most cases, the degree to which a retailer reduces the price of an item to the consumer is discretionary. They may also choose not to discount the item at all, possibly choosing instead to prominently display the item or advertise it. In some cases, the retailer may choose to pass on to the consumer a part of the purchase discount or rebate they receive. In others, they may choose to offer the consumer even more of a discount than they receive from the supplier. The retailer may also apply limits to each of these pricing schemes. These decisions are driven by many factors including inventory levels and competitive activity.

Given the above, the basic question becomes, does the manner in which a retailer receives promotional funding from a supplier and the manner in which they offer a reduced retail price to the consumer alter the taxability of a retail transaction? Does Sub-Section b-2-A simply refer for coupons issued by suppliers or also to those issued at the retailer's discretion? Does Sub-Section b-2-B imply that if the supplier funding is the result of a negotiation, any retailer-issued coupon should be treated as a reduction in retail rather than a manufacturer's coupon? (I.e. A form of tender.) Please find below several specific examples. For each, we ask that you indicate the sale amount upon which the retailer should collect occupation tax from the customer.

1. A supplier and retailer negotiate a contract stating that the retailer will receive a per-case purchase discount of \$2.40/case for a particular product. The product is packed 24 units/case so this discount translates to a purchase discount of 10¢/unit. The retailer elects to pass on to the consumer 5¢ to be delivered in the form of a temporary price reduction available to all customers. The item's regular retail is \$1.29.

Should the retailer charge tax on: \$1.29 \$1.25 (Circle One)

2. A supplier and retailer negotiate a contract stating that the retailer will receive a per-case purchase discount of \$2.40/case for a particular product. The product is packed 24 units/case so this discount translates to a purchase discount of

10¢/unit. The retailer elects reduce the price of the item 20¢ from \$1.29 to \$1.09 in the form of a temporary price reduction available to all customers.

Should the retailer charge tax on: \$1.29 \$1.19 \$1.09 (Circle One)

3. A supplier and retailer negotiate a contract stating that the retailer will receive a per-case purchase discount of \$2.40/case for a particular product. The product is packed 24 units/case so this discount translates to a purchase discount of 10¢/unit. The retailer elects reduce the price of the item 20¢ from \$1.29 to \$1.09 in the form of a retailer-issued electronic coupon available to all customers who present a frequent shopper card.

Should the retailer charge tax on: \$1.29 \$1.19 \$1.09 (Circle One)

4. A supplier and retailer negotiate a contract stating that the retailer will receive a per-case purchase rebate of \$2.40/case for a particular product. The product is packed 24 units/case so this discount translates to a purchase discount of 10¢/unit. The retailer elects to pass on to the consumer 5¢ to be delivered in the form of a temporary price reduction available to all customers. The item's regular retail is \$1.29.

Should the retailer charge tax on: \$1.29 \$1.25 (Circle One)

5. A supplier and retailer negotiate a contract stating that the retailer will receive a per-case purchase rebate of \$2.40/case for a particular product. The product is packed 24 units/case so this discount translates to a purchase discount of 10¢/unit. The retailer elects reduce the price of the item 20¢ from \$1.29 to \$1.09 in the form of a temporary price reduction available to all customers.

Should the retailer charge tax on: \$1.29 \$1.19 \$1.09 (Circle One)

6. A supplier and retailer negotiate a contract stating that the retailer will receive a 10¢/unit rebate for each unit sold at retail for a period of time regardless of whether or not it is sold at a reduced price. The retailer elects reduce the price of the item 20¢ from \$1.29 to \$1.09 in the form of a retailer-issued electronic coupon available to all customers who present a frequent shopper card.

Should the retailer charge tax on: \$1.29 \$1.19 \$1.09 (Circle One)

7. A supplier and retailer negotiate a contract stating that the retailer will receive lump sum payment of \$4,400 for promoting a particular product. The product is packed 24 units/case and the retailer projects that they will sell 1,000 cases in one week if they advertise the item in their weekly circular. According, the retailer applies \$2,000 of the lump some payment to defer advertising expenses and applies the remainder to reduce cost of goods by approximately 10¢/unit. The retailer elects to pass on to the consumer 5¢ to be delivered in the form of a temporary price reduction available to all customers. The item's regular retail is \$1.29.

Should the retailer charge tax on: \$1.29 \$1.25 (Circle One)

8. A supplier and retailer negotiate a contract stating that the retailer will receive lump sum payment of \$4,400 for promoting a particular product. The product is packed 24 units/case and the retailer projects that they will sell 1,000 cases in one week if they advertise the item in their weekly circular. According, the retailer applies \$2,000 of the lump some payment to defer advertising expenses and applies the remainder to reduce cost of goods by approximately 10¢/unit. The retailer elects reduce the price of the item 20¢ from \$1.29 to \$1.09 in the form of a temporary price reduction available to all customers.

Should the retailer charge tax on: \$1.29 \$1.19 \$1.09 (Circle One)

9. A supplier and retailer negotiate a contract stating that the retailer will receive lump sum payment of \$4,400 for promoting a particular product. The product is packed 24 units/case and the retailer projects that they will sell 1,000 cases in one week if they advertise the item in their weekly circular. According, the retailer applies \$2,000 of the lump some payment to defer advertising expenses and applies the remainder to reduce cost of goods by approximately 10¢/unit. The retailer elects reduce the price of the item 20¢ from \$1.29 to \$1.09 in the form of a retailer-issued electronic coupon available to all customers who present a frequent shopper card.

Should the retailer charge tax on: \$1.29 \$1.19 \$1.09 (Circle One)

I ask that you contact me prior to issuing any official opinion so we may discuss the nuances of each scenario. You may reach me at my office or on my mobile phone. It is incumbent upon AAA as the provider of a retailer's pricing system to support the intricacies to each state's tax law. We appreciate your prompt attention to our inquiry.

DEPARTMENT'S RESPONSE:

We cannot respond in the format requested, but hope that the following general information is helpful. Retailers incur Retailers' Occupation Tax on their gross receipts from retail sales. Gross receipts are defined as all the consideration actually received by a seller from whatever source, except traded-in tangible personal property. See the enclosed copy of 86 Ill. Adm. Code 130.401. If sellers receive a reimbursement or rebate from any other source, the amount of that reimbursement or rebate is considered part of the gross receipts received by those sellers and is fully taxable. If retailers offer discounted prices for items and do not receive any reimbursement or rebate for those discounts, the lower amounts received for those items would be the retailers' gross receipts for those sales. The retailers would incur Retailers' Occupation Tax on those lower amounts and the purchasers would pay the corresponding Use Tax to the retailers based upon those same amounts. See the enclosed copies of 86 Ill. Adm. Code 130.2125, Trading Stamps and Discount Coupons.

Rebates from suppliers must be distinguished from situations in which retailers receive discounts from suppliers and pass those discounts on to customers. In the latter instance, the gross receipts subject to tax will include only those amounts received by the retailer from customers. This situation is analogous to that described in Section 130.2125(b)(2)(B).

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 Section 1200.110(b).

Very truly yours,

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JTG:msk
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