

A donor who places tangible personal property in the United States Postal Services for delivery into Illinois maintains the right to recall that tangible personal up until the time it is placed in the recipient's mail receptacle, thereby exercising power or control over that tangible personal property and, thus, making a taxable use of the property in Illinois. See 86 Ill. Adm. Code 150.201(a). (This is a GIL.)

December 5, 2008

Dear Xxxxx:

This letter is in response to your letter dated November 13, 2006, 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.

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

The purpose of this letter is to request a ruling regarding whether use tax is due on materials used to produce advertising materials.

REPRESENTATIONS

1. This ruling request is submitted in conformance with the requirements established in 86 Ill. Admin. Code 1200.110.
2. Neither an audit examination nor litigation is pending with the Illinois Department of Revenue ('Department') involving COMPANY, with respect to the UseTax [sic] on the issues presented below.
3. The 'Department' has not previously ruled on the same or similar issues presented below for the 'Company' or a predecessor.
4. The 'Company' has not previously submitted the same or similar issues to those presented below to the 'Department'.
5. The 'Company' is not aware of any authorities that are contrary to the taxpayer's conclusions as provided in the 'Taxpayer's Analsys' [sic] section below.
6. Enclosed please find a Power of Attorney, Form IL-2848, authorizing FIRM to represent the 'Company' on this matter.

7. The taxpayer requests that all confidential information be deleted pursuant to 86 Ill. Admin. Code 1200.110(c) prior to dissemination of the Department's ruling to the public.

STATEMENT OF FACTS

The 'Company' produces and [sic] advertising publication/booklet each month. This publication is distributed to residents inside and outside of Illinois. The publication is delivered free of charge to the recipient; no fee is collected from the recipient of the booklet. The publication is primarily of local merchant advertisements either in full page, partial page displays, or bold typeface with the merchants' information listed.

The publication is printed out of state, and mailed directly to homeowners in the area surrounding the merchants. The publication is distributed to new and current homeowners free of charge. The method used to mail the publication is U.S. postal service. The content of the publication is principally advertisements within the definition of advertisement, as defined in 'The New Lexicon Webster's Dictionary of the English Language 12'; which states that to advertise is to draw attention, make conspicuous, make known, and/or proclaim publicly in order to promote sales.

The primary purpose of publishing, delivering, and advertising in this booklet is to attract customers to the merchants' retail stores, or places of business.

The 'Company' has no processing, distribution, warehousing, or inventory facilities in Illinois. The publications mailed to Illinois residents are produced at the 'Company's' STATE facilities [sic].

The 'Company' employs sales agents in Illinois. There is no management located in Illinois. The customer order process is as follows:

1. A sales person solicits Illinois businesses to advertise in our publication. The sales person prepares a customer order, and forwards it for fulfillment to STATE.
2. The contract information is entered into our order/contract system in STATE
3. If required, a credit check is conducted in our STATE office.
4. If we have any questions, we will call the potential customer from STATE. For example, we may contact them on advertising layout.
5. The contract is approved in STATE. In STATE, the contract is reviewed for price verification. The contract can not be approved by our sales person. Final approval after review of contract occurs in STATE.

The 'Company' is currently self-assessing Service Use Tax on the publications it distributes to Illinois residents.

ISSUE FOR RULING/RULING REQUESTED

1. Should the 'company continue to self-asses Service Use Tax on the publications it distributes to Illinois residents?

RELEVANT AUTHORITY

Illinois Regulation, 86 Ill. Adm. Code 160.101 states that 'The Service Use Tax is a privilege tax imposed on the privilege of using, in this State, tangible personal property

that is received anywhere as an incident to a purchase of service from a serviceman, as 'serviceman' is defined in the Act'.

STATEMENT OF AUTHORITIES SUPPORTING TAXPAYER'S VIEWS

The 'Company' is not aware of any authority contrary to its views. The 'Company' believes that because of the fact that the 'Company' ceases to exercise control of the publications once it delivers it to the United States Postal Service in STATE, it does not use the publications in Illinois. As such, the publications are not subject to the Service Use Tax.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). After reviewing your request, the Private Letter Ruling Committee has decided not issue a Private Letter Ruling and issue a General Information Letter instead.

Under the Illinois Use Tax Act, persons who purchase tangible personal property (such as an advertising publication/booklet) and give it away make a taxable use of the donated property. If the person's use of that property occurs in Illinois, the person incurs Use Tax liability (or potentially Service Use Tax liability for custom printed materials). "Use" is defined as the exercise by any person of any right or power of tangible personal property incident to the ownership of that property. See the Department's regulation at 86 Ill. Adm. Code 150.201(a), which can be found on the Department's website. Accordingly, if a person causes that property to be mailed to an addressee in Illinois and that piece of mail comes to rest in Illinois, still being subject to recall by the sender at the time it comes to rest, the sender would be considered to have used that piece of mail in Illinois.

It is the Department's understanding that a sender does not cease to exercise control over the tangible personal property once it is in the possession of the United States Postal Service because the sender has the right to recall that tangible personal property prior to delivery to the addressee. The Regulations of the United States Postal Service, found in the Code of Federal Regulations at 39 C.F.R. 211.2, provide in relevant part that:

"(a) [t]he regulations of the Postal Service consist of . . . (2) *The Mailing Standards of the United States Postal Service, Domestic Mail Manual*" (DMM).

This DMM, updated September 11, 2008, specifically Section 5.1, entitled "Who May Recall Mail", provides that:

"[m]ail deposited in a collection box or at a Post Office may be recalled, with proper identification, by the sender or the sender's representative. Form 1509 must be submitted to the postmaster at the office of mailing."

The United States Postal Service Glossary of Postal Terms, Publication 32, updated through July 5, 2007, defines the following terms:

1. "Recall mail" as "[m]ail that is withdrawn from the mainstream and returned to the sender or designated representative at the sender's request."

2. "Delivery" as "[t]he act of taking mail from the post office to the customer. The mail itself taken to the customer's business or residential delivery address or picked up at a post office – whether post office box, window, or dock."

Accordingly, senders of tangible personal property who deliver to the United States Postal Service tangible personal property to be mailed from an out-of-State location and delivered to residents of Illinois retain the right to recall. As such, senders do not cease to exercise power or control over the tangible personal property and, thus, make a taxable use of the property in Illinois and may incur a Use Tax or Service Use Tax liability in Illinois.

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