

This letter discusses Service Occupation Tax and donor/donee situations. See 86 Ill. Adm. Code 150.305. (This is a GIL.)

December 10, 2008

Dear Xxxxx:

This letter is in response to your letter dated February 14, 2008, 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:

I am requesting written clarification as to the Sales and Use Taxability of my client's services rendered in your state. My client is based in STATES but services dentists all across the US. My client is a loyalty solutions company providing general dentistry, cosmetic, and orthodontic practices a unique and affordable patient loyalty program called PROGRAM.

PROGRAM is the first and only program to provide practicing dentists a turnkey, patent-pending technology-driven system which automatically promotes, tracks, and delivers valuable earned rewards for patients. PROGRAM compellingly drives desired patient behaviors. Patients enjoy free access to 200,000 travel and entertainment rewards for behaviors that benefit their oral health and appearance and drive profits to the dental practice.

As part of the service provided to the dentists my client will mail each selected patient household an announcement package explaining their dentist is participating in the PROGRAM and how it works for them.

On an ongoing basis my client will process the reward deposits and customer tracking, monthly emails with the dentist photo to reinforce their brand, program customer service, and reporting to the dentists' office.

My client bill the dentists'[sic] a one time set up fee then a monthly program fee to maintain the program.

Are the fees collected by my client or the mailings to specific households into your state subject to Sales or Use Tax?

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. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For general information regarding sales of service and Service Occupation Tax, see 86 Ill. Adm. Code Part 140.

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.

Without more information we cannot provide information on any sales tax liabilities involved with the redemption of the rewards for travel or entertainment. Please note that travel and entertainment are not generally subject to Retailers’ Occupation Tax, but if any tangible personal property is transferred to a service customer, the provider may incur either Service Occupation Tax or Use Tax liability under one of the four methods described above.

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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

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