

This letter discusses the rules regarding sales to exempt purchasers and certificates of resale. See 86 Ill. Adm. Code 130.210, 86 Ill. Adm. Code 130.1415, and 86 Ill. Adm. Code 130.2005

March 10, 2014

Dear Xxxxx:

This letter is in response to your letter dated August 12, 2013, 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:

COMPANY (COMPANY) is seeking sales tax guidance on behalf of our client. We are requesting the Department to issue a General Information Letter based on the following facts and circumstances.

Facts:

Our client is a foodservice company providing food, nutrition and dining services to hospitals, healthcare and senior living facilities. In providing these services sometimes the company is acting as an independent contractor and sometimes they are acting as an agent for the client. Some of the clients are tax exempt entities and some are for profit organizations. For some of the contracts the foodservice company supplies the hourly labor to fulfill these services and other times the hourly labor is supplied by the client. Finally, some of the billings from the foodservice company to the client are based on a per patient/resident day rate using a midnight census. Other billings from the foodservice company to the client are based on a negotiated fee plus reimbursement of all purchases paid by the foodservice company for payroll, food and supplies.

Issues:

Our client is requesting a ruling on the taxability of the invoices involved in providing these services based on the following scenarios.

The foodservice company is acting as an independent contractor, the foodservice company supplies the hourly labor, charges from the foodservice company to the client are based on a per patient/resident day rate and the client is an exempt entity.

- 1) Are invoices from the food vendor to the contractor (foodservice company) taxable or exempt?
- 2) Are invoices from the food vendor directly to the client taxable or exempt?
- 3) Are invoices for supply purchases from the supplier to the foodservice company taxable or exempt?
- 4) Are invoices for supply purchases from the supplier directly to the client taxable or exempt?
- 5) Does the taxability change if the foodservice company is acting as an agent of the client instead of acting as an independent contractor?

The foodservice company is acting as an independent contractor, the foodservice company supplies the hourly labor, charges to the client are based on a per patient/resident day rate and the client is a for profit entity.

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Thank you for your cooperation in this matter. Please direct your response or any questions you may have to the undersigned.

DEPARTMENT'S RESPONSE:

Unless an exemption applies, the Illinois Retailers' Occupation Tax (ROT) 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.

Your letter posits several questions based on eight hypothetical scenarios. The Department does not respond to hypothetical questions. We cannot address many of the issues you have inquired about without reviewing contracts and other pertinent documents. Furthermore, we do not have specific enough information regarding the legal relationships between the parties and the activities of the parties, to determine who incurs tax liability and the nature of that liability. We have included general guidance and references to regulations and case law, which we hope you find helpful. Since we are unable to ascertain the exact nature of the legal relationship between your client and its customers, we can provide only general information.

One of the scenarios your letter mentions is a sale for resale. A transaction is not taxable if the entity you are selling to presents to the seller an active certificate for resale and certifies that the sale is for resale. See 86 Ill. Adm. Code 130.210 and 86 Ill. Adm. Code 130.1405. See 86 Ill. Adm. Code 130.210 and 130.1415 for criteria for sales of tangible personal property for resale.

Many of your questions refer to transactions with exempt entities. Under Subpart (b)(1)(A) of 86 Ill. Adm. Code 130.2005, nonprofit hospitals that qualify as exclusively charitable institutions and that have obtained an exemption identification "E" number from the Department are not taxable on their operation of restaurant facilities which are conducted primarily for the benefit of the hospital's employees, and which are not open to the public. The Department has determined that a nonprofit hospital dining facility is not considered to be open to the public if the facility is restricted to patients and their visitors, hospital employees (including staff doctors), volunteer workers in the hospital and doctors attending patients in the hospital. Section 130.2005(b)(1)(C) allows the same distinctions to apply to nonprofit nursing homes when they qualify as exclusively charitable institutions. Please note that nonprofit entities which are not exclusively charitable, religious or educational organizations are liable for ROT when selling tangible personal property at retail.

Hospitals often act as servicemen and may be subject to Service Occupation Tax. This would impact your liability when you sell to the hospital. It is not clear from your letter whether the hospital is subject to the Service Occupation Tax Act. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident of sales of service. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on the cost price if they are registered de minimis servicemen; or, (4) Use Tax on the cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 140.106. See also 86 Ill. Adm. Code 140.108 and 86 Ill. Adm. Code 140.109.

To the extent that a nursing home or hospital transfers tangible personal property incident to service to residents whose care is being paid for directly by a governmental body, the facility is exempt from the Service Occupation Tax, provided that it obtains the required documentation from the government purchaser. Please see 86 Ill. Adm. Code 130.2080. This is because no tax is imposed upon the purchase of tangible personal property by governmental bodies. If, however, the facility is not completely 100% government funded, its tax liability is handled differently. Purchases it makes that will be transferred to government-funded patients remain tax-exempt as governmental purchases. Property transferred to non-government funded patients, however, is taxable.

You mention that sometimes contracts are based on negotiated rates and reimbursement of expenses. We suggest that you refer to *Chet's Vending Service, Inc. v. Department of Revenue*, 71 Ill.2d 38 (1978), to determine what may be included in gross receipts. In *Chet's Vending Service*, the Illinois Supreme Court ruled that subsidies paid by an employer to a caterer who catered food and beverages through cafeterias or automatic vending machines located on the employer's industrial site were not taxable as gross receipts under the Retailers' Occupation Tax Act. See *Chet's Vending Service, Inc.*, 71 Ill. 2d at 43. Again, we do not have enough information to provide specific responses to your questions. Under any of these scenarios, please take care in properly documenting tax-exempt purchases whether using certificates of resale or "E" numbers. Resale certificates must be completed properly. If record keeping is not done correctly, you could be subject to additional liability, including penalties and interest.

I hope this information is helpful. You may wish to review our regulations. 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,

Cara Bishop
Associate Counsel

CB: