

Caterers incur Retailers' Occupational Tax liability on their entire gross receipts from sale, without deductions on account of overhead costs, such as charges for linens, dishes, flowers or delivery. (This is a GIL.)

August 21, 2015

Dear Mr. XXXX:

This letter is in response to your letter June 19, 2015, 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:

We are a Certified Public Accounting firm and have acquired a catering client and we have a sales tax question we need answered.

In reviewing the internet we found one letter from the sales tax department, one dated December 12, 2008 which I am enclosing. We need verification as to equipment showing whether it is [sic] dishes, chairs, tables, etc, subject to sales tax. We also need verification as to Personal cleaning and organizing service for parties and events Delivery and set up Rental items for customer use subject to sales tax.

The client has a location in which they cook the food and then go to banquet halls or to people houses and cater the party. We believe that only the food portions should be subject to sales tax and that the catering bill which is a service should not be subject to sales tax. The bill on the invoice is separated to reflect the Food portion and the catering portion labor is broken down. The fees are negotiated separately and specified on the contract separately.

Could you please help us and give us a letter explaining what the correct sales tax laws are in regard to the above.

DEPARTMENT'S RESPONSE:

Retailers' Occupation Tax Act

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. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. The retailer must pay Retailers' Occupation Tax to the Department based upon its gross receipts, or actual amount received, from the sale of the tangible personal property.

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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

Service Occupation Tax Act

Illinois Service Occupation and Service Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information, see 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Catering

As noted above, the Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property for use or consumption. Persons that are engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their gross receipts from such sales. See 86 Ill. Adm. Code 130.2145. Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. Section 1 of the Retailers' Occupation Tax Act defines the term, "selling price," as the "consideration for a sale valued in money ... without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever...." See, 35 ILCS 120/1. See also 86 Ill. Adm. Code 130.410.

As a result, tax is imposed upon a caterer's entire gross receipts from a sale, without any deduction on account of service costs or other overhead costs. A caterer's gross receipts would include all receipts associated with his sale of food. Such costs would include charges for linens, tables, chairs, dishes, glasses, flowers, labor, set-up, and delivery. Each of these items is a part of the cost of doing business as a caterer. It is immaterial that the customer is separately billed for the price of these items. These costs are costs of doing business as a caterer, just as they would be part of the overhead expenses incurred by a restaurant owner.

When a caterer makes separate charges to customers for items which are not associated with the sale of food, such items are not taxable, provided that they are separately listed on the invoice to the customer and are initialed by the customer. This would be the case, for instance, with charges for entertainment (singers, bands, and the like).

Personal Cleaning Or Janitorial Services

It is the Department's understanding that normally no tangible personal property is transferred to customers of personal cleaning or janitorial services. However, persons who provide cleaning or janitorial services and use cleaning supplies as part of those services incur Use Tax liability on the cost price of those cleaning supplies because they are using those cleaning supplies in this State. The recipients of those services incur no tax liability in regards to the use of the supplies by the cleaning or janitorial service providers. Because the supplies are used by the providers of cleaning or janitorial services, they cannot be purchased for resale.

Persons providing cleaning or janitorial services will be subject to Use Tax on purchases of paper products because those persons are purchasing these items in order to fulfill their obligations under the contract. The purchase of cleaning supplies and other items, which may consist of linens, uniforms and garbage bags, is also subject to Use Tax.

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

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