

If an item is an item substantially similar to stock or standard items, even though custom-made, it would be subject to Retailers' Occupation Tax, as is the case with tailor-made clothing, draperies, etc. See 35 ILCS 120/1. (This is a GIL.)

June 7, 2022

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter, in which you requested 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 writing to ask your guidance regarding charging sales tax for my personal chef business. I spoke to a representative today in your Taxpayer Assistance office who suggested that I might qualify as a De Minimus serviceman. I believe there is justification for this based on my business model but I would like confirmation from your office before proceeding.

I am currently a personal chef in the CITY. In the past, I have worked both in clients' own homes and in shared commercial kitchen space. In the upcoming months I will be moving to commercial kitchen space in CITY. As part of the city licensing process I had to apply for my Illinois certificate of registration. My newly obtained registration number is: #####-####. I understand that this is how I would pay my monthly sales taxes. However, as my business is a service and I already pay sales tax to my suppliers for raw ingredients, I believe there is justification to be exempt from sales tax.

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I would very much appreciate an official answer from your office as to if this is the case. Here is more detail about my business model:

I work for regular private clients, who number between 10 and 16 depending on circumstances. For each client, I prepare and deliver several meals for consumption over the following days (typically one week, sometimes two). The meals are delivered together, on the same day, cold, for later consumption.

I do not sell food to the general public and only have a portfolio of private clients. Each client receives a specially designed menu that I create for them which takes into account both their food preferences and nutritional needs. Menus change each week and are proposed by myself and approved by the client. I purchase all my raw ingredients retail as the quantities I need are too small to qualify for wholesale. As each client's menu is different, I am unable to buy most ingredients in bulk and need to go to the grocery store each day to get what I need. I always pay sales tax on all of my groceries and other raw ingredients.

I charge my clients two different ways: either for my time plus groceries, or one set price (which is a combination of time and groceries). The end result is the same: I charge much more for my time than for the ingredients themselves. The final product delivered to the client is approximately 5 days' worth of personally designed meals that are cold and ready to either freezer or refrigerate, and reheat when the client is ready for them.

My food costs (ingredients) represent around 20% of my gross receipts.

When I move to commercial space my business model will be the same. The space will be solely used for food preparation, and will not be open to the general public. Food will be delivered cold, ready to store in the refrigerator or freezer for reheating at a later date.

After discussions with the tax office and studying the statutes, I believe there is justification for the De Minimus classification, however, I only want to proceed this way with written verification by your office. If you have additional questions for me I am happy to discuss this further. I can be reached by phone at ###-###-#### or by email at E-MAIL

Thank you very much for your consideration,

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. 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. Illinois also imposes a tax upon persons engaged in this State in the business of making sales of a service, based on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101.

If an item is an item substantially similar to stock or standard items, even though custom-made, it would be subject to Retailers' Occupation Tax, as is the case with tailor-made clothing, draperies, etc. See 35 ILCS 120/1. The test for special order items set forth in the Department's regulations at Section 130.2115, with respect to Machinery, Tools and Special Order Items, requires that in order to be taxable under the Service Occupation Tax, rather than the Retailers' Occupation Tax, the following must apply: (1) the property must have a use or value for the specific purpose for which it is produced; (2) the property must have use or value only to the purchaser; and (3) the purchaser must employ the seller primarily for engineering and design skills rather than simply production skills. The fact that tangible personal property transferred is not a stock item and is only produced after an order is received, or is an alteration of a standard item, is not sufficient to exempt it from Retailers' Occupation Tax unless these three factors are met. 86 Ill. Adm. Code 130.2115.

When retailers buy tangible personal property from vendors that they will resell to purchasers, they may purchase such items tax-free by providing their vendors with properly executed Certificates of Resale. See the Department's regulation at 86 Ill. Adm. Code 130.1405, which describes the requirements for Certificates of Resale. A sale may be made tax-free if the purchaser has an active registration number or resale number from the Department and furnishes that number to the seller in connection with certifying to the seller that any sale to such purchaser is nontaxable because of being a sale for resale. See 35 ILCS 120/2c. Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale.

Persons engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their receipts from those sales, and it is immaterial that the class of purchasers may be a limited one. See 86 Ill. Adm. Code 130.2145. For general information purposes food which is to be consumed off the premises where it is sold (other than alcoholic beverages, food consisting of or infused with adult use cannabis, soft drinks, candy and food that has been prepared for

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immediate consumption), the tax imposed is at the lower rate of 1% plus local taxes if any. See 86 Ill. Adm. Code 130.310(a). For more information on the taxation of food, please refer to the Department's regulation on Food, Soft Drinks and Candy at 86 Ill. Adm. Code 130.310.

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,

Alexis K. Overstreet
Associate Counsel

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