

Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. Tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon the serviceman's activities. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

November 22, 2022

NAME/ADDRESS

Dear Ms. XXX:

This letter is in response to your letter dated October 31, 2022, 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:

We are representing a business that holds sporting events in CITY that is looking to confirm whether certain ticket sales are subject to Illinois ROT. They sell all-inclusive tickets that include both admission to the sporting event and food/drink (all listed for one bundled price). After polling other businesses in CITY, it looks like the industry standard here is to only collect CITY and COUNTY amusement tax, not ROT. We're inclined to agree that they should be characterized as a service provider that only collects local amusement taxes on these all-inclusive tickets, but we are trying to reconcile 86 Ill. Admin. Code 130.2145. On its face, the regulation makes it appear that ROT could also apply to ticket sales subject to the amusement taxes, but that doesn't seem consistent with how the taxes have historically worked.

November 22, 2022

We are not looking for binding guidance but would like to get your thoughts, as we expect you have worked with similar businesses in the past.

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 at retail 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.

Generally, 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. However, according to *Dinner Theatre Assoc. v. Ill. Dept. of Rev.*,

[t]he test for determining the actual nature of a transaction which involves both a sale of tangible goods and the providing of a service is one of proportion. If a taxpayer's business is the sale of food, for which entertainment is offered only to induce customers to dine, then a retailers' tax is assessed. (*Miller v. Department of Revenue* (1958), 15 Ill. 2d 323.) If, on the other hand, the sale of a service includes a relatively insignificant or incidental transfer of tangible personal property, then a service tax applies. (*American Airlines, Inc. v. Department of Revenue* (1974), 58 Ill. 2d 251.) A taxpayer, however, may be involved in a taxable business of both selling goods at retail and in the furnishing of a service.

139 Ill. App. 3d 911, 912 (3d Dist. 1985).

Comparing *Dinner Theatre* to *American Airlines*, the meals are an integral and substantial part of the dinner theatre operation, whereas the relationship between the meal cost and the airline ticket is *de minimis*. *Id.* at 913. In *American Airlines*, for instance, the same fare was charged on flights between the same points even when food was not served. *Id.*

A sporting event would not necessarily be considered an inducement for customers to dine. Depending on the facts, a sporting event where food and beverages are included in the ticket price and not separately stated, may be considered a sale of service (providing entertainment) that includes a relatively insignificant or incidental transfer of tangible personal property. If that is the case, Service Occupation Tax would apply to the transaction. The Service Occupation Tax base would be determined using the standard analysis based on whether the serviceman is a *de minimis* or a registered serviceman. See 86 Ill. Adm. Code 140.108.

If it is determined that Retailers' Occupation Tax liability is not applicable to a transaction, there is no need to refer to 86 Ill. Adm. Code 130.2145. Neither the true object test nor the minimum charges assessment would apply to a situation where the nature of the transaction is one of service. As such, the next step would be to determine the cost ratio between the annual aggregate cost of tangible personal property transferred incident to sales of service and the annual gross receipts from all sales of service. 86 Ill. Adm. Code 140.105.

Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. Tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon the serviceman's activities. The serviceman's liability may be calculated in one of four ways:

- (1) Service Occupation Tax on the separately stated selling price of tangible personal property transferred incident to service;
- (2) Service Occupation Tax on 50% of the servicemen's entire bill;
- (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or
- (4) Use Tax on the servicemen's 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.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base (the second method described above). Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and

COMPANY/NAME

Page 4

November 22, 2022

persons engaged in graphics arts production). Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

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,

Kimberly Rossini
Associate Counsel

KAR:dlb