

Universities may make tax-free sales of meals to residential students who use “dining dollars” purchased as part of a mandatory meal plan at university operated dining locations open to the general public, but only if there is an auditable and verifiable record of food sales to each of those students. See 86 Ill. Adm. Code 130.2005. (This is a PLR.)

April 4, 2023

NAME
UNIVERSITY
ADDRESS

Dear NAME:

This letter is in response to your letter dated October 7, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to UNIVERSITY, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither UNIVERSITY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

Please accept this letter as a request for a Private Letter Ruling pursuant to Illinois Administrative Code Section 1200.110(b). UNIVERSITY requests the ruling to determine whether the Illinois Retailers' Occupation Tax ("ROT") should be collected and paid on food sold to residential students participating in meal plans at University operated dining locations open to the general public while non-public residence hall cafeteria style dining options are available.

1. A complete statement of the facts and other information pertinent to the request.

Chartered in YEAR1, UNIVERSITY first opened its doors as the UNIVERSITY in YEAR2 as a teachers' school. We have since grown into a world-class, research-focused public institution that attracts students from across Illinois, the country, and the world. As of the Fall YEAR3 semester, over ##### students were enrolled at the University, ##### of which were residential students living in campus housing.

All housing contracts require the purchase of a meal plan, which entitles residential students to meals at any of the University's dining options. The base meal plan entitles students to ## meals a week and \$\$\$ in declining balance "Dining Dollars" per semester, with options to increase the number of weekly meals up to ## for an additional cost. "Dining Dollars" can be used at any of the campus dining options which include three dormitory cafeterias closed to the general public as well as eight retail locations in various buildings across campus that are open to the public.

While faculty, staff, and commuter students can also purchase meal plans that include both meals and "Dining Dollars". "Dining Dollars" issued to residential students are encoded with a separate digital tag to differentiate them. The University's point-of-sale system can recognize the residential tender tag and produce an auditable and verifiable record of the related transactions. "Dining Dollars" can only be used at campus dining locations, all of which are operated by the University.

All parking on the University's campus requires a permit with the exception of a visitor lot with a daily fee and several small meter lots around campus. This significantly restricts potential competition with local, off-campus dining establishments. See the attached chart of dining locations and campus maps for more information.

2. All contracts, licenses, agreements, instruments, or other documents relevant to the request.

Attached are licensing agreements for COMPANY2, COMPANY3, and COMPANY4 locations operated by UNIVERSITY as on campus dining options.

3. An identification of the tax period at issue, and disclosure of whether an audit or litigation is pending with the Department as explained in subsection (a)(3)(C) of this Section.

UNIVERSITY is not under audit by the Illinois Department of Revenue for ROT and there is no ROT litigation pending over this issue.

4. A statement that to the best of the knowledge of both the taxpayer and the taxpayer's representative the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, or whether the taxpayer or any representatives previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

To the best of our knowledge, the Illinois Department of Revenue has not ruled on the same or a similar issue for UNIVERSITY, nor has UNIVERSITY previously withdrawn after submitting the same or a similar issue for ruling.

5. A statement of authorities supporting the taxpayer's views, an explanation of the grounds for that conclusion and the relevant authorities to support that conclusion.

The Illinois Department of Revenue has held that meals served to students and staff in on-premises dining facilities are not subject to Retailers' Occupation Tax. In any instance in which the dining facility is opened up for the use of other persons, all sales made at that facility are subject to Retailer's [sic] Occupation Tax while the facility remains opened (86 Ill. Admin. Code 130.2005(b)(4)). An accommodation has been historically granted through several Private letter rulings including ST 95-0195 - FOOD (PLR) cited in Subway Restaurants v. Topinka, 322 Ill. App. 3d 376, 381, 385-387 (Fourth Dist. 2001)¹, ST 01-0004-PLR and ST 07-0002-PLR, as well as General Information Letter ST 11-0108-GIL. This accommodation provides that in dining facilities open to the public, tax free sales of meals may be made to students who both reside in university housing and have purchased a meal plan where a mechanism is in place that can produce a record of those sales that are both auditable and verifiable. Further, this accommodation has also been extended to declining balance "Dining Dollars" sales made to those same residential students with meal plans.

¹ In the Subway case, the court said of PLR 95-0195: "In that ruling, the Department determined that Southern Illinois University at Edwardsville (Southern) was entitled to an ROT exemption for food sales to 'students who reside in on-campus university housing who have purchased a meal plan,' even though such sales were made at the student union, which was open to students, faculty, staff members, and the general public. Department of Revenue, Private Letter Ruling No. 95-0195, May 12, 1995."

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6. A statement of authorities contrary to the taxpayer's views. Each taxpayer is under an affirmative duty to identify any and all authorities contrary to the taxpayer's views. If the taxpayer determines that there are no authorities contrary to his or her views, or taxpayer is unable to locate such authority, the request must contain a statement to that effect.

The accommodation above comes with the preface that the accommodation is made to schools with public dining facilities but have no non-public dormitory food facility. This line seems to imply that even where an auditable and verifiable record is produced for sales to residential students with meal plans in dining locations open to the general public, these sales would not be tax free as long as there is at least one dorm dining facility that is not open to the public. It is unclear if this is simply legacy language stemming from the original issue from which the accommodation arose, or if this language continues to disqualify universities with more diverse dining options from availing themselves of this accommodation.

7. An identification of any specific trade secret information taxpayer requests be deleted from the publicly disseminated version of the private letter ruling.

There is no trade secret information in this request.

8. The signature of the taxpayer or the taxpayer's representative. A taxpayer's representative must also provide a properly executed power of attorney.

NAME

Associate VP, Finance & Treasury

Enclosures: Chart of Dining Locations
Campus Map
COMPANY2 License Agreement
COMPANY3 License Agreement
COMPANY4 Master License Agreement

In your response to the Department's request for additional information, your email response provided the following:

Any additional dining dollars purchased by a residential student would be coded as "Add" in the system. All dining dollars function in the same

manner and can be spent at any campus dining location (closed or open to the public). The dining dollars are grouped into the below designations:

- Residential (“Res”) - Only includes Dining Dollars purchased with a mandatory meal plan by a student who lives on campus. Residential students, students living on campus, are required to purchase a meal plan.
- Additional (“Add”) - Any Dining Dollars purchased by (i) a residential student separately from a mandatory meal plan, or (ii) by an off-campus student.

The point-of-sale (“POS”) system separates the dining dollars by type, residential (“Res”) and additional (“Add”). The system first processes against the “Res” dollars, if available, as those expire first at the end of each semester. Then, it will process against any available “Add” Dining Dollars, which expire at the end of an academic year (these rollover from the first semester to the second).

All of the “non-franchise” dining locations (COMPANY5, COMPANY6, COMPANY7, COMPANY8, and COMPANY9) are operated by the University in campus buildings. Currently, all campus dining facilities open to the public (franchise and non-franchise) treat all sales as taxable. Our request is to treat meals purchased with “Res” dining dollars as exempt from sales tax at all campus dining locations open to the public.

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.

The question presented here is whether the Retailers' Occupation Tax should be paid on food sold to residential students who use dining dollars purchased as part of a mandatory meal plan at University operated dining locations open to the general public if non-public residence hall cafeteria style dining options are available. You have described the “Dining Dollars” program used on campus and have included the licensing agreements that the University has entered with COMPANY2, COMPANY3, and COMPANY4.

First, a review of the Department's position regarding sales of food in campus cafeterias and dining facilities. As stated in the Department's regulation at 130.2005(b)(4)(A):

A school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. In any instance in which the dining facility is opened up for the use of other persons, all sales that are made at such facility while that condition continues to prevail are taxable.

In a college campus setting, this has meant that sales of meals by the university to students and employees in a closed dormitory cafeteria were exempt, but all food sales in a student union type setting open to the public, including sales to students and employees, were taxable. The restricted cafeteria exemption has been available to schools for many years and is supported by 86 Ill. Adm. Code 130.2005(b)(4)(A). The school would incur Retailers' Occupation Tax liability if it should engage in selling any of the same items to the public.

The regulatory provisions and the closed cafeteria concept have served two purposes. The first purpose served by the closed cafeteria concept is to solve the practical impossibility that the Department would face when auditing an open facility in verifying that all sales claimed to be exempt were, in fact, made to students and employees of the school. The second purpose served by the closed cafeteria concept is the protection of retailers in competition with the school's open facility. That is, student union type (open to the public) selling competes with area food service establishments for student purchases as well as for purchases by the public. ST 95-0195-PLR.

As an accommodation to schools that sell meal plans but have no separate dormitory food facility, the Department has allowed universities to make tax-free sales of meals to students in a central food facility open to the public. ST 95-0195-PLR. Such sales by a university may be made tax free in a campus cafeteria that is open to the public only if there is a mechanism for identifying and documenting, at or before the time of sale, the nontaxable sales of food to students living in university housing and enrolled in a meal plan. ST 95-0195-PLR. The mechanism for identifying and documenting such sales to such students, however, must consist of something more than simply showing an identification card. ST 07-0002-PLR. These mechanisms must consist of systems that provide both an auditable and verifiable record of food sales to each of those students. ST 95-0195-PLR.

To avoid problems of competition, the Department has limited tax-free sales of food by universities in facilities open to the public to students who live in university housing and have purchased a meal plan. These sales can only be made tax free if the school has a program in place that allows appropriate students to be identified in an

auditable and verifiable record system. No sales paid for with “dining dollars” may be made tax exempt unless the “dining dollars” can identify students living in university housing that have purchased a meal plan. ST 07-0002-PLR. No cash sales may be made tax exempt. Meals sold to employees of the school and others, including off-campus students, are subject to tax in facilities open to the public. ST 07-0002-PLR.

Over time, the Department has become aware that on-campus food services have expanded to include various additional kinds of vending arrangements. As your facts indicate, on-campus food services include not only traditional sales of food by the University, but sales by the University operating as a franchisee or commercial vendor. ST 07-000-PLR. The distinction the Department continues to recognize is that the selling of meals by a university in a food facility open to the public may not be done tax free except to students who live in university housing and have purchased a meal plan. For this, there must be an auditable and verifiable record system in place for tracking these sales.

In 2001, the Illinois Fourth District Appellate Court decided, in the case of *Subway Restaurants v. Topinka*, 322 Ill.App.3d 376 (3rd Dist. 2001), that a restaurant selling food on campus was not an agent of the university for purposes of tax exemption. The restaurant also was not a wholesale provider of products to the university for purposes of tax, and the university was not a purchaser of the restaurant’s products for purposes of an exemption from tax. Therefore, even though the restaurant operated in a space that it leased from the university, none of the sales made by the restaurant qualified as exempt from sales tax.

It is the Department’s position, as articulated in the regulation (86 Ill. Adm Code 130.2005(b)(4)(A)), that it must be the school itself that makes such sales. This policy was affirmed by the *Subway* case discussed above.

The contracts between the University and COMPANY2, COMPANY3, and COMPANY4 (“Restaurants”) enclosed with your request, represent the licensing agreements between the University and each individual Restaurant. The contracts between the University and the Restaurants are agreements for each Restaurant, as licensor, to grant the University, as licensee, the right to use each Restaurant’s system to sell certain products in on-campus dining facilities. In each of these cases, the University is making sales of food to students and employees in on-campus dining facilities open to the public as a licensee of these three licensors.

It is the Department’s position that all such sales in on-campus dining facilities open to the public made by the University as a licensee of each Restaurant are competitive sales and as such are subject to sales tax except for sales to students who live in university housing who are using a meal plan. For this exception, there must be an auditable and verifiable record system in place for tracking these sales. This means, for example, that the system must be able to distinguish tax-free sales of meals to students who live in university housing when they use dining dollars purchased as a

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part of a mandatory meal plan (those designated as “Residential” or “Res”) from taxable sales of meals to those same students when they use dining dollars that are purchased separately from a mandatory meal plan (those designated as “Additional” or “Add”) as well as taxable sales of meals to students who do not live in university housing when they use dining dollars that are purchased separately from a mandatory meal plan (also designated as “Additional” or “Add”).

All sales of non-food items on campus, including sales made by the school, are subject to tax regardless of who purchases them. This is ongoing competitive selling.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Samuel J. Moore
Chairman, Private Letter Ruling Committee

SJM:KAR:dlb