

This letter discusses purchases and sales by not-for-profit organizations. See 35 ILCS 105/3-5(4), 86 Ill. Adm. Code 130.2005, and 86 Ill. Adm. Code 130.2007. (This is a GIL).

February 14, 2023

COMPANY
ADDRESS

Dear Ms. XXX:

This letter is in response to your letter dated September 2, 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:

To Whom It May Concern:

We are writing in regard to a sales and use tax question that we have. We are a not-for-profit organization that is subject to sales tax. I called and talked to someone at IDOR regarding our question, but the person I spoke with (and the supervisor of that person) were unable to answer the question. It was suggested that I contact you.

When we have fundraising events, we normally don't pay sales tax on our food purchases. We collect the sales tax from people buying food tickets and then submit the tax with our sales tax return. Occasionally, we will have fundraisers involving food but no food tickets are sold, only donations are accepted. Our question is this:

If we have a fundraising event where no food tickets are sold for the food served (only donations are accepted), and we pay the sales tax on the food at the time of purchase (assuming the 1% grocery

tax is in effect), is our sales tax obligation met with the paying of the 1% tax paid or are we required to pay use tax on the cost of the food purchases?

Another situation with a similar question is this:

Our organization conducts monthly meetings, which our members attend, in order to discuss various issues concerning our organization. We cook dinner for our members to eat prior to the meetings. If we pay the sales tax on the food purchases (assuming the 1% tax is in effect), have we satisfied our sales tax obligation relating to this food, or is it necessary to remit the use tax on the cost of the food purchased?

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 to purchasers for use or consumption. 35 ILCS 120/2; 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. 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. 35 ILCS 105/3-45; 86 Ill. Adm. Code 150.401. 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. 86 Ill. Adm. Code 150.130(b). If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department. See 35 ILCS 105/3-45; 86 Ill. Adm. Code 150.701(a).

Organizations that are recognized as non-profit under Internal Revenue Code Section 501(c)(3), are not necessarily exempt organizations pursuant to Illinois tax law. See 35 ILCS 105/2, 3-5(4). Such organizations must obtain an exemption identification number (an "E number") from the Department to qualify. 35 ILCS 105/3-5(4); 86 Ill. Adm. Code 130.2007.

Organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See 86 Ill. Adm. Code 130.2007. The E number evidences that the State of Illinois recognizes that the organization qualifies as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of its organizational purpose. 86 Ill. Adm. Code 150.325. If an organization does not have an E number, then its purchases from suppliers are subject to tax. 86 Ill. Adm. Code 130.2007(a). Please note that only sales to the organization holding the E number are exempt, not sales to individual members of the organization. See 35 ILCS 105/3-5(4).

It is presumed, based on the facts in this letter, that your organization has not been issued an E number by the Department. Please note, however, for general information purposes, that even organizations that have received an E number are, as a general matter, subject to Retailers' Occupation Tax upon their own sales of tangible personal property. There are three limited exceptions where organizations that have been issued an E number are authorized to engage in a restricted amount of retail selling activity without incurring Retailers' Occupation Tax liability. 86 Ill. Adm. Code 130.2005. The limited exceptions available to not-for-profit organizations described in 86 Ill. Adm. Code 130.2005 include:

- (1) Sales to Members, 86 Ill. Adm. Code 130.2005(a)(2);
- (2) Noncompetitive Sales, 86 Ill. Adm. Code 130.2005(a)(3); and
- (3) Occasional Dinners and Similar Activities, 86 Ill. Adm. Code 130.2005(a)(4).

With respect to the third exception, occasional dinners, socials or other similar activities which are conducted by exclusively charitable, religious or educational organizations or institutions are not taxable, whether or not such activities are open to the public. This exemption extends to occasional dinners, ice cream socials, fun fairs, carnivals, rummage sales, bazaars, bake sales and the like, when conducted by exclusively charitable, religious or educational organizations or institutions, whether the items that are sold are purchased or donated for the purposes of the sale, and even if the sale is open to the public. 86 Ill. Adm. Code 130.2005(a)(4)(A).

For the purposes of this exemption, "occasional" means not more than twice in any calendar year. Where more than two events are held in any calendar year, the organization or institution may select which two events held within that year will be considered exempt. Once the organization or institution has made the selections, the selections cannot be changed. All other events in that year will be considered taxable. 86 Ill. Adm. Code 130.2005(a)(4)(B).

This exemption does not extend to "occasional" sales, by exclusively charitable, religious or educational organizations or institutions, of hats, greeting cards, cookbooks, flag kits and other similar items because these are not "occasional dinners, socials or similar activities" within the meaning of the Act, and the selling of these kinds of items at retail even on an occasional basis does generally place the selling organization in substantial competition with business establishments. 86 Ill. Adm. Code 130.2005(a)(4)(C).

Please note, if the organization engages in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), it must register with the Department as a retailer and provide its suppliers with Certificates of Resale for the items it purchases for resale. See 86 Ill. Adm. Code 130.1405;

2005(a). In order for a sale for resale to qualify for the resale exemption and relieve the supplier of the retailers' occupation tax, the supplier must keep on file a valid Certificate of Resale with a valid exemption number. See 86 Ill. Adm. Code 130.1405, 2005(r).

An organization may provide meals and accept donations that are not related to the cost of the meal with the understanding that partaking in the meal is not conditioned on the making of a donation. An organization providing such a meal is the end user of the ingredients that go into the meal it serves and must pay Illinois use tax on those ingredients. An organization may not give its suppliers a certificate of resale in this situation. If this procedure is followed, then there is no sale of tangible personal property (the meal) and donations received are not subject to Illinois retailers' occupation tax.

Similarly, when an organization provides dinner at no charge and without accepting donations, the organization is considered the end user. As an end user, an organization must pay the use tax when purchasing food for the dinner. When an organization pays use tax at the time of the food purchase, its tax obligation is satisfied.

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,

Katarzyna Kowalska
Associate Counsel

KK:dlb