

This letter discusses the taxability of banquet room rentals. See 86 Ill. Adm. Code 130.410 and 86 Ill. Adm. Code 130.2145.

June 5, 2015

Dear Mr. XXXX:

This letter is in response to your letter dated March 10, 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:

My name is XXXX. I will be renting a banquet hall in the near future and have been given different information on what is or is not taxable, compared to what I believed the law requires...

If I could be specific, I would like to list the items below and if you could verify whether they should be taxed or not... (Banquet hall is in CITY, IL XXXXX)

- (1) Renting room with food is taxable at 8.75% - correct
- (2) The Service charge, in addition to any other food/room costs should not be taxed – correct?
- (3) Rental of decorations in the room, in addition to the room/food cost, should not be taxed – correct?
- (4) The rental of another room, in addition to the dining room, with no food, etc. included, should not be taxed – correct?

Thank you. I appreciate your time in clearing this up.

DEPARTMENT’S RESPONSE:

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 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).

We cannot provide you with a specific answer without examining the contracts and invoices associated with these transactions. However, we hope you will find the following information helpful. Please refer to 86 Ill. Adm. Code 130.2145(e) for the taxability of charges for banquet rooms. If the true object of the transaction is the rental of the banquet room, and if food or beverages are provided only incidentally to the room rental, no tax is incurred on the charges for the room rental. The Department deems an incidental provision of food or beverages to include the providing of non-alcoholic beverages, such as coffee, tea and soft drinks, and the providing of snacks, such as cookies, popcorn, candy, doughnuts, fruits and raw vegetables. If no separate charge is made under the contract for the incidental amount of food or beverages provided, the renter is considered the user of the food or beverages and incurs Use Tax on its cost price of the food or beverages transferred incidentally to the rental of the room. If a separate charge is made for the food and beverages transferred incidentally to the rental of the room, the renter incurs ROT on the selling price of the food or beverages. If the true object of the transaction is the sale of food or beverages, any room rental charges are part of the seller's cost of doing business and are includable in the seller's gross receipts even if the charges for the room rental are separately stated on the agreement between the seller and its customers.

Please note that if foods other than snacks are provided or if alcohol is provided, the Department deems the sale of food or beverages, not the rental of the room to be the true object of the transaction. In this situation, the banquet provider would incur Retailers' Occupation Tax on its gross receipts from the sale of the food and beverages, along with any charges made for the rental of the room.

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,

Cara Bishop
Associate Counsel

CB:kd

