

Tangible personal property may only be purchased tax free when the sale is made directly to an exempt organization, which possesses a valid and active exemption identification number (E-number). See 35 ILCS 120/2-5(11).

June 25, 2015

Dear Mr. XXXX:

This letter is in response to your letter May 05, 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:

We are asking for an opinion letter on two sales tax matters:

Our company will be **selling and renting graduation caps and gowns** to students in public and/or private schools. Is this a taxable transaction?

Thank you for your assistance with this matter. If you have any questions or concerns, please call me at xxx-xxx-xxxx.

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. See 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. See 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. 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. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

In your letter, you ask about sales of graduation caps and gowns to students. Though you may be making some sales to students who attend tax exempt schools, it seems that you make the sales directly to the students, not the school. Tangible personal property may only be purchased tax free when the sale is made directly to an exempt organization, which possesses a valid and active exemption identification number (E-number). See 35 ILCS 120/2-5(11).

Your letter also mentions that you rent graduation caps and gowns to students. Please be aware that Illinois taxes rentals differently than many other states. When you rent an item of tangible personal property to students, and the transactions are structured so that they constitute "true leases," then no Retailers' Occupation Tax liability is incurred on the rental receipts. Under Illinois law, "true leases" and "leases" that are actually conditional sales contracts are treated differently for Retailers' Occupation and Use Tax purposes.

True leases generally have no buy out provisions at the close of the leases. If buy out provisions do exist, they must be fair market value buy out options in order to maintain the character of the true leases. Lessors of tangible personal property under true leases in Illinois are deemed end users of the leased property and they incur Use Tax liability on their cost price of such property. As noted above, no tax liability applies to rental receipts under true leases. The only exception is automobiles rented for one year or less, which are subject to the Automobile Renting Occupation Tax.

Under 86 Ill. Adm. Code 130.2010(a), persons who purport to "lease" the use of property, but in fact sell such tangible personal property to nominal "lessees," are considered to be making conditional sales whose total receipts are subject to Retailers' Occupation Tax. Such would be the case when the agreements contain one dollar or other nominal purchase options.

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

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