

ST 16-0010-PLR 09/16/2016 GROSS RECEIPTS

Membership fees are not gross receipts from the sale of tangible personal property. Membership fees are gross receipts received in exchange for an intangible. See 86 Ill. Adm. Code 130.401(d) and 86 Ill. Adm. Code 140.101. (This is a PLR.)

September 16, 2016

RE: ST-16-0006-COMPANY PLR

Dear Xxxxx:

This letter is in response to your email dated August 18, 2016, 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. 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 COMPANY, 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 COMPANY, 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:

On July 29, 2016, the Department issued the above-cited ruling to our client, COMPANY. Pursuant to our discussions, we are submitting this e-mail for your consideration and for written clarification as to whether charges for the PRODUCT, which is described below, are considered part of the selling price of the groceries upon which it computes its Retailer’s [sic] Occupation Tax (“ROT”) liability.

COMPANY is an online grocery delivery service. After completing a shopping order and as part of the checking out process, customers are given two options for obtaining/receiving the groceries: (1) have the groceries delivered to a residential or commercial address for a charge, which varies depending on the amount of the order, the type of customer, the zip code of the delivery address and whether the customer has separately purchased a PRODUCT, or (2) pick up the groceries at a bricks and mortar location (PUP) for a lesser charge than option 1. Separately, and not as part of the grocery ordering/checkout process, a customer can sign up for PRODUCT, which is a prepaid "all inclusive" delivery charge for 3 month, 6 month or 12 month periods. With PRODUCT, the customer pays the delivery charge upfront which then gives the customer "free" deliveries (part of option 1 above) to the customer's residential or commercial address for the time period of the PRODUCT.

We offer the following example which will hopefully make the situation clearer. A customer places an order for \$XXX in groceries and upon checkout, the customer has the following options; (1) pay \$XXX to have the order delivered to the customer's residential address/commercial address, or (2) pay \$XXX to pick-up the order at the local bricks and mortar COMPANY location (PUP). However if the customer had instead paid \$XX up front for a 3 month PRODUCT, during checkout, charges for delivery are separately identified but the customer is given a credit to offset the delivery charges.

In the above-cited ruling, the Department provided responses to options (1) and (2), but not to the charges for the PRODUCT. Therefore the question that we are seeking clarification is whether the PRODUCT charges are subject to tax.

Please don't hesitate to contact me if you have any questions.

DEPARTMENT'S RESPONSE:

This Private Letter Ruling supplements Private Letter Ruling ST 16-0006.

Your letter states that a customer can purchase a PRODUCT for \$\$\$\$. It is our understanding that the PRODUCT entitles the customer to 3 months of shipping and handling and is a method for the customer to prepay shipping and handling charges for their upcoming grocery orders. Generally, the Department does not consider receipts from the sale of such fees to be gross receipts from the sale of tangible personal property. Based on the information you have provided, it is the Department's position that the PRODUCT is an intangible, which is not subject to the Retailers' Occupation Tax Act or the Use Tax Act. 86 Ill. Adm. Code 130.401(d). This is the case because the PRODUCT does not include the transfer of tangible personal property.

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,

Richard S. Wolters
Chairman, Private Letter Ruling Committee

RSW:CB:bkl