

A person who purchases tangible personal property for the purpose of giving it away makes a taxable use of the property and incurs Use Tax upon such purchase. See 86 Ill. Adm. Code 150.305(c). (This is a GIL.)

October 9, 2009

Dear Xxxxx:

This letter is in response to your letter dated May 18, 2009, 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:

I would like to 'reward' my better patrons via a variation of the old S&H green stamps program. From an Illinois based vendor, I wish to have my patrons (also mostly Illinois based) select merchandise they desire from the vendor's internet catalog. The items would be shipped to these patrons directly from the vendor.

My company will not be recording any revenue on these transactions, as they are not sales from my inventory. We would instead reimburse the vendor for the cost of the items selected. My vendor would also charge me Illinois sales tax. **My question: *Is this the correct sales/use tax treatment?***

When I initially posed this question to the IDOR via the internet in February 2009, the response I received from INDIVIDUAL was that 'If you are giving these items away to your customers, you would owe use tax on your cost price of the item.'

My vendor is insistent that sales tax charged by them to my company is sufficient; that use tax does not apply in this situation. I am merely looking to clarify the discrepancy, sales vs. use tax. INDIVIDUAL's May response has referred me to your department.

I have enclosed a copy of the email response initially received from INDIVIDUAL in February as well as her May response. As my company is looking to begin this

promotion in the near future, a quick response from your department is greatly appreciated. If you have any questions or concerns, please do not hesitate to contact me.

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 retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

When property is purchased and then given away, the donor has made a taxable use of the property by making such gift. Therefore, it is the donor of the gift who is deemed the end user of the property and who is subject to the Use Tax, rather than the donee. See 86 Ill. Adm. Code 150.305(c); See *also* 86 Ill. Adm. Code 130.2125(c) concerning "Gift Situations." The donor may satisfy this Use Tax obligation either by paying tax to his supplier or by self-assessing Use Tax and paying directly to the Department as discussed above.

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.

Sincerely,

Samuel J. Moore
Associate Counsel