

This letter informs the taxpayer that the publication described qualifies for the newsprint and ink exemption under the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 130.2105. (This is a PLR.)

January 6, 2009

Dear Xxxxx:

This letter is in response to your letter dated April 30, 2008, in which you requested a Private Letter Ruling. 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.

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:

COMPANY sells nutritional, dietary, and skin care products through a multi-level network of independent distributors. COMPANY is considered an 'MLM' or multi-level marketer such as Amway. Our physical location is in CITY/STATE. COMPANY charges sales tax based upon the address to which we ship and based upon full retail price. COMPANY files one consolidated state sales/excise tax return in lieu of each independent distributor filing a separate return with your State.

We sell the enclosed PUBLICATION directly to our Independent Distributors as a sales and marketing tool. We requested a General Information Letter on the taxability of this item on September 4, 2007, but the department was unable to issue a specific ruling. We are now requesting a Private Letter Ruling to determine whether this publication should be classified as a tax exempt magazine or a taxable sales aid.

We have reviewed Adm. Code Section 130.2105(a)(2) and maintain the following assertions. The PUBLICATION is published monthly, thus meeting the primary test for

the newsprint and ink exemption. This particular issue was briefly available for purchase in selected bookstores and retail locations by the general public in early 2008 with an earlier version available to the general public in 2006. However, it is no longer available through retail outlets to the general public. In addition, it contains articles of value to the general public ARTICLES. General advertisers in this issue include ADVERTISERS.

While we believe the above factors fulfill the requirements for the newsprint and ink exemption, we acknowledge that COMPANY promotes this particular issue of PUBLICATION expressly as a sales and marketing tool for our Independent Distributors. In addition, while we have not located a formal ruling relating specifically to our taxability question, we received an informal opinion in the course of a sales tax audit in October 2007. Illinois Revenue Auditors offered advice that the particular PUBLICATION spotlighting COMPANY is not published periodically nor is it available for subscription, thus disqualifying it from the exemption.

As this informal opinion from the revenue auditors differs from the assessment provided in response to our original GIL request, we are requesting a ruling in regard to the above specific factors. Please send the Private letter Ruling to my attention at the address provided. If you need additional information, please feel free to contact me.

Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

Gross receipts from the sale of newspapers and magazines in Illinois are not subject to tax under the Retailers' Occupation Tax Act. The Department's regulation regarding sellers of newspapers, magazines and books at 86 Ill. Adm. Code Section 130.2105(a)(2), states that:

[s]ales of newspapers and magazines are not subject to the tax because of the newsprint and ink exemption (see Section 1 of the Act). In determining whether a publication qualifies as a magazine for the purpose of the newsprint and ink exemption, there is one test that must be met and several other factors to be considered. The test that must be met for a publication to qualify as a magazine is that it must be published periodically in the form of newsprint and ink. Periodically means at least two times per year. The other factors to be considered are whether a member of the public can subscribe to the publication, whether the publication is one that has the basic format of a magazine, including soft covers, individual pages and indexed articles, whether it contains articles and items that have value to the general public, and whether it contains general advertising. A publication that has one or more of these characteristics would be considered to be a magazine, assuming the initial test of periodic publication is met. 86 Ill. Adm. Code 130.2105(a)(2).

See also, *Moody's Investors Service, Inc. v. Department of Revenue* 445 N.E.2d 1331 (Ill. App. 1983), *affirmed* 461 N.E.2d 972 (1984).

The Private Letter Ruling Committee made the following findings:

- 1) the publication states on Page 7 that it is published monthly;
- 2) it contains general advertising; and
- 3) it has the basic format of a magazine (i.e., soft cover, individual pages and indexed articles).

Based upon this information, it is the Department's position that the publication that was attached to your letter qualifies for the newsprint and ink exemption. Please note that this determination applies only to this publication as represented by the sample provided and is based on the understanding that this publication is published monthly.

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 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,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

TDC/DB:mks