

Gross receipts from the sale of newspapers and magazines in Illinois are not subject to sales tax. See 86 Ill. Adm. Code Section 130.2015. (This is a GIL.)

January 27, 2009

Dear Xxxxx:

This letter is in response to your letter dated May 16, 2008, 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.

In your letter you have stated and made inquiry as follows:

This letter and contents herein are intended to comply with Illinois regulations at 2 Ill. Adm. Code Section 1200.110. Our client, respectfully request [sic] a Private Letter Ruling regarding the following actual facts and circumstances of their business activity in Illinois and the determination of sales and/or use tax consequences of their business activities.

Relevant facts and circumstances

CLIENT, a STATE incorporated entity whose home office is in STATE2 and singular branch office located in STATE3, is a publisher of a freely distributed advertising magazine. The magazine paid advertisements target high school student athletes and is distributed free of charge to high schools. Revenue is generated via paid advertisements. The magazine content comprises articles of local and regional interest to high school student athletes and paid advertising. Paid advertising generally constitutes approximately 49% to 50% total content of the magazine. The magazine is distributed 9 to 10 times per year coinciding with the school's academic calendar year.

The magazine is printed out of state from Illinois by a third party provider who arranges all details of printing and delivery for CLIENT. All issues are delivered via United States Postal Service (USPS) to the respective high school's Athletic Director (AD). The AD makes the magazine available to interested student athletes. CLIENT does not control how or if the schools do in fact distribute the aforementioned magazine. CLIENT does

not possess power of recall over the magazine and schools are under no obligation to return the magazine and may do as they please with the magazine.

Schools are in total discretion and control over the magazine and may contact CLIENT and stop mailing of these free magazines at any time as they are not under any contractual agreement to accept or make the magazine available to the students. CLIENT does not monitor distribution to the students nor provides racks or other means of display to the schools. CLIENT will periodically contact the AD to see if the number of magazines delivered is adequate to their needs but this is the extent of feedback, if any, provided to CLIENT by the AD.

The Company does not have an office, warehouse or agents distributing the magazines in Illinois. The sole means of distribution is via the high school. The Company did employ a single remote sales person [sic] to contact potential advertisers in Illinois and contiguous states but this remote salesperson is no longer employed. CLIENT has filed income tax returns in Illinois and apportioned activity based upon the number of magazines delivered to schools in Illinois. The Company is not registered for sales tax collection in Illinois and has never collected sales tax in Illinois as the magazine is distributed free. Nor has CLIENT paid use tax in Illinois under the assumption the magazine is exempt.

Ruling Request

Is the magazine described above subject to sales or use tax in Illinois?

Statement of authorities in support of position of non taxability

1. Ill. Title 86, Section 150.201(a) defines 'use' as 'the exercise by any person of any right or power over tangible personal property incident to ownership of that property...' In this regard CLIENT contracts with a third party provider who is responsible for the printing and delivery of the units to the USPS. The printing is performed outside of Illinois and CLIENT has no control over these magazines once in the hands of the USPS. Furthermore, the respective schools are under no obligation to accept and distribute the magazines but do so at will. The school's AD is not an agent of CLIENT and no remuneration is paid to the school for making the magazines available to the students. Therefore, since CLIENT is not the end user in Illinois, nor control the magazine once in Illinois and does not 'use' the tangible personal property in Illinois themselves they are exempt from use tax in the state.

ST 08-0010-GIL, dated 01/17/2008, addresses a similar fact pattern regarding distribution of free catalogs and Illinois intimated the Donor of such free information would not be liable for use tax for advertising materials mailed via USPS into Illinois from an out of state location as the Donor exercised no power or control over the property in Illinois. CLIENT fact pattern is similar in the regard they provide free material but do not control the property nor consume the product themselves in Illinois. Also, CLIENT does not offer items for purchase and is solely intended to entertain and advertise to the high school student athlete.

2. Section 130.2105(a)(2) states, 'Sales 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).'

In this regard the aforementioned magazine distributed free of charge conforms to all elements of the Illinois code section with the exception that the magazine is free. It is our understanding the true intent of the legislature is to exempt magazines from sales tax therefore substance over form dictates the free distribution to high school student athletes of a magazine would not be a taxable event.

Taxpayer representations

1. Taxpayer is not under audit by the state of Illinois for this issue or any other and there is no litigation pending with the Department of Revenue for any matter.
2. To the best of the knowledge of both the taxpayer and representative the Department has not previously issued a PLR ruling on the same or similar issue for the taxpayer. Enclosed please find GIL dated April 10, 2008 for this same matter.
3. Taxpayer representative is unable to locate any contradictory positions or on-point prior rulings with the same fact pattern.
4. Enclosed please find properly executed IL Form 2848.
5. Enclosed please find sample magazine issue.

If you have any questions or need further information please contact me.

DEPARTMENT'S RESPONSE:

The Private Letter Ruling Committee recently determined that it will no longer issue Private Letter Rulings regarding whether a specific magazine meets the requirements of subsection (a)(2) of 86 Ill. Adm. Code 130.2105. It is the Private Letter Ruling Committee's position that its regulation at 86 Ill. Adm. Code 130.2105 is dispositive of the subject of your request, as are several General Information Letters that the Department has issued which can be found on the Department's website. 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).

Gross receipts from the sale of newspapers and magazines in Illinois are not subject to sales tax. 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).

In your letter you state that the magazine is distributed 9 to 10 times per year and “conforms to all elements of the Illinois code section with the exception that the magazine is free.” The regulation is clear that if the magazine is published periodically (at least two times per year) and the magazine has one or more of the characteristics identified in Section 130.2105(a)(2), it would be considered to be a magazine. As long as a publication meets the requirements of Section 130.2105(a)(2), it would still qualify for the exemption as a magazine even if it was provided to recipients at no charge.

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,

Richard S. Wolters
Associate Counsel

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