

Sellers of personalized business calling cards, letterheads, envelopes, labels, name plates, badges, medallions and the like do not incur Retailers' Occupation Tax liability on their receipts from such sales because they are engaged in a service occupation in producing or procuring custom-ordered items that have no commercial value to others. If the items produced, however, have intrinsic usefulness and so have commercial value to persons other than the customer, they are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.1995. (This is a GIL.)

December 31, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 10, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

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

We are writing to request a determination on the applicability of the Sales/Use tax of your state to certain miscellaneous charges made to our independent contractor network. Our company, COMPANY, is a network marketing company which sells nutritional and personal care products. The products are distributed through independent contractors (Team Members) who recruit other Team Members into their downline. Certain fees may be charged to the Team Members relating to services provided by COMPANY. Additionally, Team Members may purchase certain information which has been gathered and compiled by COMPANY. All services, including information services, are performed by COMPANY employees in STATE.

We request the separate determination on the charges that follow:

1. Mailing Labels

Team Members who want pre-addressed mailing labels to their downline may purchase them from COMPANY for \$5.00 plus \$.025 per label. The labels contains downline Team Members' names and addresses. The labels are customized to each Team Member's downline and are not general lists or canned information. A Team Member may not purchase another Team Members downline information in any format.

2. Mailing Diskette

The mailing diskette contains the same information as the mailing labels but is contained on a 3.5" diskette. Mailing diskettes may be purchased for \$50.00 which includes the mailing information on 1 diskette. There is a \$2.00 charge per diskette if additional diskettes are required to store the Team Member's information. Additional copies of the mailing diskette(s) are not available for purchase by Team Members.

3. Downline Information Diskette

The downline information diskette contains detailed information on the Team Member's downline, such as the downline members level, phone number, volume information, etc. in addition to the mailing information. The downline information diskette is available to Team Members for \$100.00. There is a \$2.00 charge for each additional diskette if additional diskettes are required to store the purchased information. Additional copies of the downline information diskette(s) are not available for purchase by Team Members.

4. Downline and Commission Reports

The group downline report provides the name, level, phone number, current month's purchase volume and prior month's volume of the Team Member's downline members and costs \$15.00 plus \$.50 per page. The group downline report is faxed to the Team Member.

The monthly commission report provides purchase volume information for each member of the Team Member's downline and costs \$4.00 to \$10.00 per report depending on the level of the Team Member. The commission reports are mailed to the Team Members.

5. On-line Services

COMPANY offers on-line computer access to services through the internet for a monthly fee. The on-line service allows the Team Members to place orders and access information 24 hours a day, 7 days a week. The inter-net service also allows the Team Member to check the status of orders, personal volume status, downline volume status, request informational faxes on products, execute downline inquiries and track shipment. There are currently no additional charges for downloading information from the on-line site.

6. NAME Club

Team Members of a certain rank may join a NAME Club for \$10.00 a month. NAME Club members have access to an inter-net site which provides motivational audio clips, selling tips and other news. NAME Club members also receive periodic mailings and are entitled to attend special meeting.

7. Sales Leads

COMPANY generates sales leads through the use of mass media (i.e. television and radio ads, etc.). The leads are collected and made available for purchase to existing Team Members. The charge for the lead is \$7.00 which includes the information on the lead as well as

mailing services. Each prospect is mailed a 12 minute video tape which explains the New Vision business opportunity and solicits the prospective member to contact the Team Member who has purchased the lead. A separate charge is made to the Team Member who purchased the sales lead for the video tape at the same price that it is otherwise available for purchase from COMPANY.

8. Admission Charges

The company holds conventions and conducts motivational meetings for which it charges admission. The conventions are typically for 3 or 4 days and the location is determined on a convention by convention basis. The other meetings will typically last for a half day to a day and are organized as tours with multiple stops during the tour. The charges range from \$10.00 to \$200.00.

Please specify the basis for taxation or exemption and provide a citation to the relevant statute or regulation in your response. Your response should be sent to the following address:

NAME/ADDRESS

Please do not hesitate to contact the undersigned at ####, if you have any questions on the above charges or this ruling request. Thank you for your prompt consideration of this matter.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1996 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1996 State Bar Edition).

Please find enclosed a copy of 86 Ill. Adm. Code 130.1995 concerning Personalizing Tangible Personal Property. Sellers of personalized business calling cards, letterheads, envelopes, labels, name plates, badges, medallions and the like do not incur Retailers' Occupation Tax liability on their receipts from such sales because they are engaged in a service occupation in producing or procuring custom-ordered items that have no commercial value to others. If the items produced, however, have intrinsic usefulness and so have commercial value to persons other than the customer, they are subject to Retailers' Occupation Tax. This tax is imposed on 100% of the selling price of tangible personal property.

Generally, when a company produces customized materials for a purchaser, it acts as a serviceman and incurs either Service Occupation Tax liability or Use Tax liability on the sales of personalized business products to his service customers. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred

incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If the servicemen do not wish to separately state the selling price of the tangible personal property transferred, the servicemen must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Serviceman may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to the sale of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. The servicemen are not authorized to collect "tax" from their service customer nor are the servicemen liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. 35 ILCS 630/3 (1994 State Bar Edition). This tax must be collected from persons by "retailers maintaining a place of business in Illinois." 35 ILCS 630/5 (1994 State Bar Edition). "Gross charges" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer. "Telecommunications" does not include "charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content" or "value-added services in which computer processing applications are used to act

on the form, content, code and protocol of the information for purposes other than transmission." See 35 ILCS 630/2(a) and 2(c). If telecommunications retailers provide both such services, the charges for each must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not thus disaggregated, the entire charge is taxable as a sale of telecommunications.

Generally, persons that provide subscribers access to the internet and who do not, as part of that service, charge subscribers for the line or other transmission charges that are used to obtain access to the internet are not considered to be telecommunications retailers from these activities. It is our general understanding that most internet access providers do not, as part of their billing, charge subscribers for such line charges, but instead, pay all transmission costs to their telecommunications providers. If companies provide telecommunications to such end-users (e.g., to the internet access providers described immediately above) and are also "retailers maintaining a place of business in this State," they are required to collect the tax from such internet access providers and remit it to the Department. If, however, the internet access providers charge subscribers for line or other transmission charges, they should provide their telecommunications providers with Certificates of Resale and should themselves collect and remit tax.

Admission charges to conferences and seminars are generally not subject to Retailers' Occupation Tax or Service Occupation Tax. However, please note that such taxes are generally applicable when materials, such as written texts, are provided to attendees at the conferences.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.