

When a retailer obtains a properly completed Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. See Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). (This is a GIL.)

August 11, 2006

Dear Xxxxx:

This letter is in response to your letter dated July 28, 2006, 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:

This letter constitutes a request for a General Informational Letter pursuant to Illinois Administrative Code 1200.120.

The Company (X) manufactures and sells commercial heating, ventilating, and air conditioning (HVAC) equipment. This equipment typically becomes a part of real estate when installed. Equipment is manufactured at plants in several locations in the US. X's customers consist primarily of construction contractors and building owners. When X sells to a customer who may be a construction contractor, X may ship the equipment to the customer's place of business, or X may ship the equipment to a location specified by the customer where the contractor customer will install the equipment. Shipments are made to either location via common carrier hired by X. Can X accept a resale certificate from a customer who is going to install this equipment if X ships the equipment to the contractor's place of business in Illinois? What is the answer if X ships to a location specified by X's customer which may be a jobsite in Illinois? Can a blanket resale certificate be accepted to cover all purchases from a contractor/customer?

In addition to equipment sales, X operates parts centers in Illinois. These parts centers sell HVAC repair parts. Can the X parts center accept a resale certificate from a customer who could be a contractor in the following situations?

1. X's customer is purchasing repair parts to be placed in the customer's inventory for future resale?
2. X's customer is purchasing repair parts to be used by the customer in a project for maintaining, repairing, or replacing HVAC equipment for a building owner under a lump sum contract?
3. X's customer is purchasing repair parts to be used by the customer in a project for maintaining, repairing, or replacing HVAC equipment for a building owner under a time and material contract?
4. At the time of purchase X does not know how its customer will use the item, but X's customer provides a signed resale or other exemption certificate.

If the answer to any of the four 'repair parts' questions above differs, must X make an inquiry about how the part is used or can X rely upon a signed resale certificate issued by the customer? Can the customer provide a blanket resale certificate to exempt all purchases made by this customer?

Please advise the answers to all of the above questions. Provide law references when applicable. If you have any questions relating to the above, please call me.

DEPARTMENT'S RESPONSE:

Construction contractors that make improvements to real estate in Illinois by taking materials off the market and permanently affixing them to real estate incur Use Tax on the cost price of those materials. See 86 Ill. Adm. Code 130.2075. Those materials are not being purchased for resale, but are being taken off the market and used by the construction contractor. However, if a construction contractor also makes "over-the-counter" sales apart from acting as a construction contractor and it is impractical, at the time of purchase, to determine the manner in which he will dispose of the property, that construction contractor may buy all of his materials for resale and later account to the Department for the Retailers' Occupation Tax on the sale or use of those items. See subsection (b)(1) of Section 130.2075.

A construction contractor that does not make "over-the-counter" sales apart from acting as a construction contractor, may not certify to a supplier that the materials that he purchases are for resale. As described above, the construction contractor takes those materials off the market and uses them. A retailer would not be liable for Retailers' Occupation Tax on the gross receipts from a sale when the retailer accepts a properly completed Certificate of Resale (see, 86 Ill. Adm. Code 130.1405) that contains a valid registration number. A retailer's obligation with respect to Certificates of Resale is found at 86 Ill. Admin. Code 130.1401 and 130.1405. In addition, see Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Business" tab and then the "Verify a Registered Business" link.

If a retailer properly documents a sale for resale with a properly completed Certificate of Resale containing a valid registration number, the retailer is not required to determine if the purchaser actually resells the items or instead uses or consumes them. However, a retailer may not induce a customer to provide a Certificate of Resale for a purchase when that purchase is not for resale. If a purchaser uses an item himself or herself (i.e., it was not purchased for resale), the Department will generally look to the purchaser for the tax, not the retailer, provided the above stated conditions are met.

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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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