

This letter concerns sales of cabinetry. (This is a GIL.)

April 12, 2007

Dear Xxxxx:

This letter is in response to your letter dated January 22, 2007, 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](http://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:

We are requesting assistance in determining the applicability of sales tax assessed on materials purchased in connection with our kitchen renovation ('Project').

Sales tax referred to herein is the Occupation Tax imposed on the sellers' receipts and the Use Tax imposed on amounts paid by the purchaser. Sellers owe the Occupation Tax to the Illinois Department of Revenue ('State') and reimburse themselves for their liability by collecting Use Tax from the purchaser.

#### **FACTS**

Contractor was hired to perform our kitchen renovation. All materials relevant to the Project were purchased from the Contractor, such as cabinets, sink, faucet, disposal, and lighting (see attached materials invoice referenced at Exhibit A).

The Contractor services were billed in two parts: labor costs and materials.

According to the Contractor, they hold resale certificates for their various vendors so that they can collect and remit sales tax on retail sales.

#### **APPLICABLE STATE RULES AND REGULATIONS**

For guidance in this matter, we refer to the following sections of the State's Regulations:

**Title 86 Part 130 Section 130.1940 b)1)** - Construction contractors incur Retailers' Occupation Tax liability when they engage in selling any kind of tangible personal property without installation to purchaser for use or consumption.

**Title 86 Part 130 Section 130.1940 b) 4)** - If the seller is taxable notwithstanding installation, but the sale and installation are made by the seller pursuant to his performance of a construction contract, the seller's receipts from that part of the transaction which actually comprises the construction contract are not subject to the Retailers' Occupation Tax. In this situation, if a separate charge is made for the tangible personal property to which the construction contractor is taxable, the value of such property for purposes of computing the Retailers' Occupation Tax is the amount charged for such property, but not less than the cost of such property to the construction contractor. If no separate charge is made in this situation for the tangible personal property as to which the construction contractor incurs Retailers' Occupation Tax liability, the value of such property for computing the Retailers' Occupation Tax is the cost of such property to the construction contractor.

**Title 86 Part 130 Section 130.1940 c)** - A construction contractor does not incur Retailers' Occupation Tax Liability as to receipts from labor furnished and tangible personal property (material and fixtures) incorporated into a structure as an integral part thereof for an owner when finished and installed as an incident of a construction project. The construction contractor incurs the Use Tax on the cost price of the tangible personal property that is incorporated into real estate.

- 1) For example, a construction contractor does not incur Retailers' Occupation Tax liability on receipts from selling and installing screen doors and windows; storm doors and windows; weather stripping; insulation material; Venetian blinds; window shades; awnings; ***cabinets built into the structure***; floor coverings cemented or otherwise permanently affixed to the structure by use of tacks, staples, or wood stripping filled with nails at protrude upward (sometimes referred to as 'tacking strips' or tack-down strips'), but not including floor coverings that are area rugs or that are attached to the structure using only two-sided tape; plumbing systems or parts thereof, such as bathtubs, lavatories, sinks, faucets, water pumps, water heaters, water softeners, water pipes, etc.; heating systems or parts thereof, such as furnaces, stokers, boilers, heating pipes, etc.; ventilation systems or parts thereof; commercial refrigeration systems or parts thereof; electrical systems or parts thereof; brick; lumber; sheet metal; roofing materials, and other similar items.

## **DISCUSSION**

Pursuant to Title 86 Part 130 Section 130.1940 b) 1), we were not a retail customer as we did not take delivery of such items for our own installation. Contractor acted as the contractor handling the installation as referenced in the Labor Itemization Exhibit B.

Initially, we did not question the applicability of sales tax on the original Materials Itemization List. The question arose when we were supplied with a quote for the purchase and installation of our granite countertops. We received 2 quotes from vendors we selected on our own and there were no separate charges for sales tax. The quote supplied by Contractor utilizing their own vendor included sales tax. We questioned the applicability, as other quotes did not include a separate line item for tax,

as well as the fact that sales tax was being applied on materials and labor, despite the State Regulations' prohibition against the application of sales tax on labor. Additionally, at one point during the finalization phase of our materials and labor list, the Contractor reclassified a line item for \$550 for repairing the kitchen floor from the Materials Itemization List stating that labor was not taxable, and placed it on the Labor Itemization List.

The Contractor provided the material and labor in connection with the Project and provided two separate invoices for material and labor. The materials included a separate charge for Use Tax. The materials, kitchen cabinets and counters, are permanently affixed to the building structure.

## **ISSUE**

We seek clarification to the applicability of Code Section 130.1940 c) 'A construction contractor does not incur Retailers' Occupation Tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures) incorporated into a structure as an integral part thereof for an owner when furnished and installed as an incident of a construction contract. The construction contractor incurs Use Tax on the cost price of the tangible personal property that is incorporated into real estate'.

Based on our interpretation of Code Section 130.1940 c), Contractor did not incur Retailer's [sic] Occupation Tax, for which they are seeking reimbursement for themselves for their liability by collecting the Use Tax from us, the purchaser. It [sic] our position that the Contractor is liable for remitting Use Tax based on the cost price of the items installed as part of our remodel and that this is part of their cost of doing business.

## **DEPARTMENT'S RESPONSE:**

You have inquired concerning the tax liability of construction contractors and customers of construction contractors.

In response to your inquiry, please see the enclosed copy of Letter Ruling ST 06-115-GIL which addresses this issue.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://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).

Sincerely,

Samuel J. Moore  
Associate Counsel

SJM:msk  
Enc.