

In regard to the signature requirement for a Retailers' Occupation Tax resale certificate, a digital signature would be acceptable. See 5 ILCS 175/5-120 and 86 Ill. Adm. Code 130.1405. (This is a GIL.)

August 23, 2007

Dear Xxxxx:

This letter is in response to your letter dated January 23, 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.ILTAX.com 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 writing to you to request a ruling from the Department of Revenue regarding the application of the Illinois sales tax to facts described in this letter.

Issue:

With respect to Illinois sales tax, will a taxpayer be relieved of liability for collection or payment of sales tax upon transactions covered by a resale certificate which is properly completed in all respects and is signed by the purchaser with a digital signature.

Conclusion:

To the extent that a taxpayer accepts a properly completed resale certificate from a purchaser, which has been signed with a digital signature, the seller will be relieved of liability for collection or payment of Illinois sales tax upon transactions covered by a resale certificate.

Facts:

In prior years the taxpayer has accepted properly completed resale certificates from its retail customers in paper form that contained handwritten signatures. As the taxpayers

business continues to expand, the taxpayer now plans to automate the acceptance of resale certificates with digital signatures.

The taxpayer plans to collect resale certificates with digital signatures from its retail customers by implementing the following procedures:

- 1) The retailer will access a current resale certificate online at the Company's website.
- 2) The retailer will fill in the fields necessary for either a multi-state resale certificate or a state resale certificate.
- 3) Once all required information has been entered by the retailer, the retailer will click a 'Confirm Information' button. By clicking on this icon the retailer has confirmed that all information entered on the resale certificate is accurate.
- 4) The resale certificate will not be accepted by the taxpayer's online system unless all the required information on the resale certificate has been completed. The retailer will receive warning from the online system that certain required information must be provided otherwise the retailer cannot proceed.
- 5) Once the information is entered a personal code key will be collected from the retailer.
- 6) The digital signature that will be accepted online will be a unique identifier created by an encryption program that incorporates aspects of the resale certificate and a personal code key entered by the retailer into a computationally irreversible text string.
- 7) The irreversible text string would print on a PDF version of the resale certificate that will be stored by the taxpayer and be emailed to the retailer.
- 8) Accepting resale certificates with digital signatures will allow the taxpayer to conduct sales tax audits more efficiently by providing auditors with a disc of all necessary resale certificate information that is current and up to date. In addition, the taxpayer will be in compliance with the resale certificate retention requirements mandated by the state.

Law:

III. Admin. Code 130.1401(a) states that a person who sells tangible personal property to a purchaser, who may use or consume such property within the meaning of the Act, but who also may resell such property, must determine, at the time when he sells the property to such purchaser, wherever the purchaser is buying the property "for use or consumption" within the meaning of the Act or whether the purchaser is buying the property 'for resale'. Section 2c of the Act provides that purchasers of tangible personal property for resale shall apply to the Department for resale numbers. In determining whether a sale is for resale, the seller shall request that the purchaser provide a resale number and certification that the sale is for resale. This determination is required in order that the seller may properly file the returns required by the Act and compute his tax liability. So long as the seller obtains a certificate of resale from the purchaser that contains all information required by Section 130.1405, the seller need not verify that the tangible personal property he sells for resale is actually held.

III. Admin. Code 130.1405(a) provides that in the case of sales to totally exempt purchasers, when sales for resale are made, sellers should, for their own protection, take a Certificate of Resale from the purchaser. Mere statements by sellers that property was sold for resale will not be accepted by the Department without

corroborative evidence. Certificates of Resale may be made part of purchase orders signed by the purchaser.

III. Admin. Code 130.1405(b) states that a Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sale [sic] covered thereby were made for resale. In additions [sic] to the statement, a Certificate of Resale must contain:

- 1) The sellers [sic] name and address
- 2) The purchaser's name and address
- 3) A description of the items being purchased for resale
- 4) Purchaser's signature, or the signature of an authorized employee or agent of the purchaser. And date of signing;
- 5) Registration Number, Resale Number, or Certification of Resale to Out-of State [sic] purchaser
 - a) Purchaser's registration number with the Illinois Department of Revenue; or
 - b) Purchasers' [sic] resale number issued by he Department of Revenue; or
 - c) A statement that the purchaser is an out-of-state purchaser who will sell only to purchaser's [sic] located outside of the State of Illinois.

Discussion:

The taxpayer is in the process of implementing a system that allows its retail customers to complete a resale certificate online using the taxpayer's website. As the facts indicate, the system requires that the customer sign the resale certificate using a digital signature. Currently it appears that Illinois does not have a sales tax statute or regulation which states that resale certificates are only acceptable if they contain an original signature by the purchaser. In addition, the instructions to the Illinois Resale Certificate do not mention whether the form must have a handwritten signature or can be signed by other means. The statutes and regulations, as well as other guidance provided by the state, only indicate that the resale certificate must be signed.

The taxpayer believes that a resale certificate accepted in accordance with the rules under III. Admin. Code 130.1405(b) should include a resale certificate that is signed with a digital signature. The important issue is that the resale certificate is properly completed in all respects, which includes the signature. The fact that the signature on the resale certificate is a digital signature should not change the validity of the resale certificate provided that all other essential elements for accepting a resale certificate are also met.

The facts indicate that a resale certificate completed online will not be accepted by the taxpayer unless all the essential elements for claiming an exemption as required under III. Admin. Code 130.1405(b) are satisfied. In addition, the taxpayer will review the resale certificate to ensure that the document does not contain any statement or entry which the taxpayer, as the seller, knows or has reason to know is false or misleading.

Based on these facts, the taxpayer believes that a properly executed resale certificate that is signed with a digital signature and that is accepted from the purchaser relieves the taxpayer from any liability for collection or payment of Illinois sales tax upon

transactions covered by the certificate as provided under Ill. Admin. Code 130.1401(a) and Ill. Admin. Code 130.1405(b).

Please respond to this ruling request at your earliest convenience. If you have any questions, or require any additional information, please call me.

DEPARTMENT'S RESPONSE

For general information regarding resale certificates, the Department's regulation for resale certificates, "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale" is found at 86 Ill. Adm. Code 130.1405.

If an electronic resale certificate is kept, it should contain all of the information required under 86 Ill. Adm. Code 130.1405. In regards to the signature requirement, a digital signature would be acceptable. See 5 ILCS 175/5-120. The law allows the Department to look at other evidence in determining the sufficiency of a certificate of resale. Therefore, if a signature is not kept in accordance with the statute, a sale is presumed to be a sale at retail; however, other evidence can rebut this presumption in proving that the sale was in fact for resale. The risk run by companies in accepting such a certification and the risk run by purchasers in providing such a certification is that an Illinois auditor is more likely to go behind a certificate of resale that does not contain a signature and require that more information be provided as evidence that the particular sale was, in fact, a sale for resale.

If you require additional information, please visit our website at www.ILTAX.com 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,

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