

When a construction contractor permanently affixes tangible personal property to real property, the contractor is deemed the end user of that tangible personal property. As the end user, the contractor incurs Use Tax on the cost price of that tangible personal property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL.)

February 28, 2008

Dear Xxxxx:

This letter is in response to your letter dated November 27, 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 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 clarification pertaining to the proper application of sales/use tax to certain transactions conducted by a client. The client contracts with telephony companies to erect telecommunication towers. The towers are attached to the real property or structures owned or leased by the telephony companies.

The proper application of sales/use tax is requested for the following:

- Is the transfer in place of leasehold improvements attached to realty subject to taxation?
- Can a sub-contractor purchase exempt from tax, qualified telecommunications equipment billed to the general contractor on a time and material contract? A lump-sum contract?
- Can the general contractor purchase exempt from tax, qualified telecommunications equipment billed to a telecommunications company on a time and material contract? A lump-sum contract?

Your prompt response would be greatly appreciated. Please call us with any questions.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See 86 Ill. Adm. Code 130.101 and 130.201.

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. See 86 Ill. Adm. Code 1940 and 130.2075. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

We do not understand the reference in your letter to "qualified telecommunications equipment." Please be advised that there is no exemption in the Retailers' Occupation Tax Act for telecommunications equipment.

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).

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