

Persons who act as construction contractors by permanently affixing tangible personal property to real estate owe Illinois Use Tax on the cost price of that tangible personal property. See 86 Ill. Adm. Code 1940 and 2075. (This is a GIL.)

March 12, 2008

Dear Xxxxx:

This letter is in response to your letter dated January 8, 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:

General Information

The TAXPAYER is a STATE S Corporation. TAXPAYER is a sign contractor that manufactures signs for out-of-state customers. The Taxpayer also has the signs installed at the out-of-state customer's location using a subcontractor. The Taxpayer contracts with and pays the subcontractor for installing the sign and then bills the customer for the sign and installation costs and collects sales tax on the transaction in accordance with the law of the state where the sign is delivered. This sales tax is remitted to the taxing authorities in the state where the sign is installed.

The Florida Department of Revenue has taken the position that these out-of-state sales are improvements to real property and not sales of tangible personal property and that use tax is due on the fabricated cost of the signs. The Department has stated that its fabrication use tax under Section 212.06(1)(b), Florida Statutes applies to signs even though the signs are exported and installed in other states.

The Taxpayer is creating a Florida single-member limited liability company that will fabricate signs in Florida for installation in other states. The new LLC will be named BUSINESS. BUSINESS will be disregarded for federal and state income tax purposes and, therefore, treated as a division of the taxpayer. However, under state law, the

taxpayer and BUSINESS are legally distinct. This legal distinction applies for sales tax purposes. BUSINESS will purchase signs from the Taxpayer for delivery to its out-of-state customers. The Taxpayer shall deliver the signs by a common carrier or pursuant to the terms of the sales contract deliver the property using the Taxpayer's own mode of transportation.

The sale of signs by the Taxpayer to BUSINESS for export by the Taxpayer shall be arm's length transactions for resale by BUSINESS to out-of-state customers and should qualify for the export exemption under Section 212.06(5)(a)(1), Florida Statutes since the signs are delivered by the Taxpayer on a common carrier for shipment outside the state or by using the Taxpayer's own mode of transportation. BUSINESS contracts with and pays the subcontractor for installing the sign and then bills the customer for the sign and installation costs and collects sales tax on the transaction in accordance with the law of the state where the sign is delivered. This sales tax is remitted to the taxing authorities in the state where the sign is installed.

Regarding sales to out-of-state customers, the above described structure should qualify for the export exemption as exports of tangible personal property under section 212.06(5)(a)(1), Florida Statutes and Rule 12A-1.0015, Florida Administrative Code assuming they are delivered either by a common carrier or the Taxpayer's own vehicles to an out-of-state location on behalf of BUSINESS. The Taxpayer purchases the signs for resale to the out-of-state customer and collects and remits sales and use tax to the taxing authorities in that state where the sign is installed. The Taxpayer acts as the BUSINESS's agent to deliver the signs it sells to BUSINESS's out-of-state customers.

Regarding the Taxpayer's sales to Florida customers, these sales shall be made by the Taxpayer in accordance with method now required by the Florida Department of Revenue as reflected in its most recent audit of the Taxpayer. That is, it shall fabricate the signs and sell them to its Florida customers and pay use tax on the fabricated cost of the signs. It will not collect and remit sales tax on the total cost of the installed sign.

Products

TAXPAYER manufactures six distinct signage products: channel letters, back-lit letters, pylon signs, monument signs, and electronic display systems, and banners. In addition, TAXPAYER offers total customer packages which include an array of signage products custom tailored to meet the demands of a diverse range of businesses.

Channel Letters are individually illuminated letters and graphics. These letters are found everywhere, from shopping malls to exterior storefront identification. There are three types of channel letters:

- ° The most common type is Standard Channel Letters. These letters are made up of a U-channel base, with colored Plexiglas faces.
- ° Reverse Channel Letters have metal faces and returns (sides of letters) and have a clear plastic backing. These letters are designed to be mounted an inch or two away from the wall. At night, these letters create a halo-lit effect.
- ° The third type of Channel Letters have 'open' faces. Though not actually open, the faces of these letters are clear plastic with the balance of the letters built just like Standard Channel Letters. This allows for the raw neon to be seen, as well as the inside of the U-channel letterform itself.

Open Face Channel Letters are very effective for aggressively grabbing attention.

Back-Lit Letters are individual letters and graphics that are illuminated from a source that is located behind the letters. The usage of back lighting creates a halo effect around the letters and adds increased visibility and attractiveness.

Pylon signs are an effective way to provide advance notice of the location of a business or to feature a business name or logo. It is very common to see pylon signs on or near main streets. Manufactured of aluminum & steel, the structures are made for long term usage. With signage, as with many other business investments, initial cost may not reflect long term value. A properly designed sign can effectively communicate for many years.

Monument signs are free-standing signs constructed on the ground with a continuous footing or foundation and a base at grade level. Most communities have tight restrictions on the specifications for monument signs, making it imperative to engage knowledgeable professionals in the manufacturing and installation of monument signage. TAXPAYER has the knowledge and experience necessary to ensure proper compliance for every company's monument signage needs.

Electronic display systems utilize digital media to display information. The use of electronic display systems has rapidly increased due to their ability to display information rapidly, fluidly and in a more esthetically pleasing manner. Electronic displays are often utilized by companies needing to communicate large amounts of information, such as airports, bus terminals, and stadiums. However, their use has also increased rapidly in mainstream commerce. Despite a larger initial cost, electronic displays have an exceptional ROI based on their programmability and adaptability.

Banners are temporary signs until the actual sign is manufactured.

Window Graphics are vinyl signs applied inside the windows or on the doors vinyl that are used to tell store hours and emergency contact information.

Services

The Taxpayer performs design and engineering services. The marketing design department provides clients with creative artwork concepts. To ensure the highest quality of the products the Taxpayer completes inspections regularly during each stage of production, crating and shipping. In addition, as a product exits one phase of production and enters another, it must pass through a signoff inspection procedure. These methods greatly aid the staff in producing the finest possible sign products. As with all of the Taxpayer's other clients, the Taxpayer proactively works toward installation not in terms of store turnover or store opening, but in the context of each individual store's time schedule. The Taxpayer has established relationships with a network of more than 200 licensed sub-contractors designated to complete quality installations throughout the country. Within this subset, the Taxpayer has meticulously established a list of preferred sub-contractors designated to complete installations solely for the Taxpayer. The Company's relationships with these subcontractors allows them to offer superior installation services to their client base while focusing management and personnel attention to our core competency of sign design and manufacturing. The Taxpayer's nationwide maintenance network can respond to most signage issues within 72 hours, ensuring that your signs are properly maintained as quickly as possible. Also, each project nationwide will be assigned a *single contract* with the Taxpayer or TAXPAYER to help eliminate any questions.

Issues

Please define the taxes imposed by your state on the activities of TAXPAYER and BUSINESS. Please include in your analysis the taxation of the signs pre-LLC and post-LLC since the creation of the LLC will eliminate the use tax in Florida. I have attached a copy of the Florida Department of Revenue Technical Assistance Advisement.

Please include the actual state ruling in your analysis for each of the following items:

1. Define how each of the following signs TAXPAYER produces should be classified. Is it tangible personal property (TPP) or improvements to realty (IMP)? If there are further classifications, please specify.
 - Channel letters, 3 types
 - Back-lit letters
 - Pylon signs
 - Monument signs
 - Electronic display systems
 - Banners
 - Window Graphics
2. Define how the various signs are taxed. Include in the definition how lump sum and separated contracts make a difference. Also include the difference between new construction and remodeling.
3. Define how the following services and miscellaneous items on the above types of signs are taxed:
 - Engineering Sealed Drawings
 - Permits
 - Freight
 - Crate
 - Final Electrical Hookups
 - Removals, with signs to follow
 - Removals, without signs to follow
 - Repairs
 - Electrical components, ballasts, lamps with service work
 - Surveys alone
 - Surveys in conjunction with signs
 - Fascia panels
 - Trenching, boring, and conduit
4. Rarely, TAXPAYER contracts with a manufacturer in your state to manufacture the sign. In these situations, TAXPAYER is the retailer. How should the sale of these signs be taxed in your state?
5. In most cases, TAXPAYER actually installs the sign. How are signs taxed that are not installed by TAXPAYER or their subcontractors?

Anything you can do to expedite this request will be greatly appreciated. Please feel free to call or email me if you have any questions or need additional information. Thanks for you [sic] help in this matter.

DEPARTMENT'S RESPONSE:

Persons who sell signs may incur a Retailers' Occupation Tax, Service Occupation Tax or Use Tax liability, depending upon the circumstances of the particular sale. See 86 Ill. Adm. Code 130.2155 (Tax Liability of Sign Vendors); 86 Ill. Adm. Code 130.450 (Installation, Alteration and Special Service Charges); 86 Ill. Adm. Code 140.101 (Basis and Rate of the Service Occupation Tax); 86 Ill. Adm. Code 130.1940 (Construction Contractors and Real Estate Developers) and 86 Ill. Adm. Code 130.2075 (Sales To Construction Contractors, Real Estate Developers and Speculative Builders).

For information on handling and delivery charges, see 86 Ill. Adm. Code 130.410 (Cost of Doing Business Not Deductible) and 86 Ill. Adm. Code 130.415 (Transportation and Delivery Charges).

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,

Richard S. Wolters
Associate Counsel

RSW:msk