

This letter concerns a sale of service when no tangible personal property is transferred incident to that sale of service. See 86 Ill. Adm. Code Part 140. (This is a PLR).

October 6, 2009

Dear Xxxxx:

This letter is in response to your letter dated March 2, 2009 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.

This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

This letter is a request for a binding Private Letter Ruling (pursuant to the provisions of 2 Ill. Admin. Code 1200) regarding the applicability of sales tax for our services.

We offer Construction Dust & Debris Protection to building owners and roofing contractors. We install plastic below the ceilings in commercial buildings to prevent debris from falling into work areas during a re-roofing construction project performed by another company. The plastic is only temporary and may remain in place from a couple of days up to several months. Upon completion of the roofing/construction project, our crew removes the plastic and the accumulated construction dust and debris on and above the plastic.

Our material costs represent approximately 10% of the customer's sales price. The material cost percentage is even less if the additional cleaning is chosen. COMPANY pays Sales or use tax on all material purchases.

We are concerned with the time period beginning November 2006 and forward. There is no ongoing audit or litigation regarding this sales tax matter. We have not previously

submitted this issue to the Department and the Department has not previously ruled on this issue for COMPANY. A sample customer contract is enclosed for your review.

We request the 10% material percentage be treated as a trade secret and deleted from the publicly disseminated version of the private letter ruling.

We believe our service to fall under either the contractor or 'De Minimis' Serviceman rules whereby no tax is charged to customers and use tax is paid on materials purchased. We would like to have a private letter ruling stating that our service is a non-taxable transaction.

Please contact me if you have any questions. Thank you for your assistance in this matter.

DEPARTMENT'S RULING:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140. The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon how the serviceman is classified. There are four ways that the tax can be calculated: (1) separately-stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately-stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they

incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. See 86 Ill. Adm. Code 140.108.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. See 86 Ill. Adm. Code 140.109.

It is the Department's understanding based on your letter that the plastic is installed by COMPANY as part of a service it provides. It is also our understanding, based on the sample contract, that plastic is included in the description of labor, equipment, materials and supervision provided pursuant to the contract and that a price is assigned to the plastic described in the contract. Finally, it is our understanding that at the completion of the project, all plastic and materials are removed and no tangible personal property is transferred to the customer as part of the service provided by the COMPANY.

Based on these understandings and the information provided in your Private Letter Ruling request, COMPANY has no Service Occupation Tax or Service Use Tax liability on the service transactions described herein because no tangible personal property is being transferred incident to those sales of service. COMPANY does incur Use Tax on all tangible personal property that is used in this State, such as the PLASTIC and any other materials or equipment. If these items are purchased in this State, COMPANY must pay its Use Tax liability to its Illinois suppliers. If these items are purchased from suppliers outside of this State who are not registered to collect Illinois Use Tax, COMPANY must self-assess the tax and remit it directly to the Department of Revenue. See 86 Ill. Adm. Code 150.701. COMPANY will get a credit against its Illinois Use Tax obligations for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310(a)(3).

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

TDC/RW:msk