

This letter discusses the requirements for Certificates of Resale. 86 Ill. Adm. Code 130.1405.  
(This is a GIL.)

January 5, 2009

Dear Xxxxx:

This letter is in response to your letter dated September 24, 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 writing your department on behalf of our CLIENT, to request a letter ruling regarding the sales and use tax treatment for the purchase and sale of certain equipment.

#### **FACTS**

CLIENT is a provider of wireless internet access services with offices located outside the state of Illinois. CLIENT will provide internet access services to business and residential customers in a multi-state region, including Illinois.

CLIENT markets and sells its internet access service both directly to customers and through third-party agents ('Dealers'). New subscribers sign up for a one (1) year contract. Use of CLIENT's internet service requires a subscriber to purchase certain customer premise equipment ('CPE'). Customer can only purchase the CPE from a CLIENT authorized dealer in order to obtain CLIENT's internet access service. CLIENT purchases separate components of the equipment from suppliers in Illinois and STATE. The equipment is also assembled in Illinois and STATE. CLIENT issues its suppliers a resale certificate, takes ownership and briefly maintains an inventory of CPE in warehouses in Illinois and STATE. CPE is shipped directly from these warehouses to Dealers both inside and outside of Illinois.

We are seeking sales/use tax guidance on the following scenarios:

### **Scenario A**

CLIENT purchases the CPE from its suppliers for a total cost of \$600. A resale certificate is issued to each supplier. CLIENT then sells the CPE to an authorized Dealer for \$360. Dealer provides CLIENT with a resale certificate, thus CLIENT does not charge Dealer sales and use taxes on purchase.

An Illinois subscriber signs up for internet access service either directly through a Dealer, or via CLIENT which refers the new subscriber to a Dealer. Dealer sells subscriber CPE for \$360, installs CPE at subscriber location, and bills, collects and remits all applicable Illinois sales and use taxes for CPE sold at \$360 and installation services. Dealer is compensated by CLIENT via a commission. CLIENT bills subscriber for internet access over the period of the contract.

### **Scenario B**

CLIENT purchases the CPE from its suppliers for a total cost of \$600. A resale certificate is issued to each supplier. An Illinois subscriber signs up for internet access services directly with CLIENT. CLIENT sells Illinois subscriber the CPE for \$360. An authorized installer will obtain the CPE (sold by CLIENT to the Dealer) from the nearest Dealer and install the CPE at subscriber location. CLIENT will submit a credit memo to Dealer for the CPE item originally purchased by Dealer. CLIENT will bill, collect and remit all applicable Illinois state and local sales and use taxes for CPE and installation services based upon the sales price of \$360. CLIENT bills subscriber for internet access over the period of the contract.

## **ILLINOIS LAW INTERPRETATION & SPECIFIC RULING REQUEST**

The Illinois Department of Revenue has previously addressed the imposition of sales and use taxes when an item is sold below cost. The Department addressed the sale of cellular phones at a discount in conjunction with the sale of taxable telecommunications services in General Information Letter ST 95-0035-GIL, issued on January 23, 1995. In that Letter the Department stated in its response that when a party 'sells cellular equipment to a customer for a particular dollar amount, he has made a sale subject to the Retailers' Occupation Tax ('ROT').' The Letter also stated that the seller must pay ROT based on the actual amount received, and not on the full retail price of the equipment.

The Department also addressed a situation similar to the one in question in General Information Letter ST 02-0110-GIL, issued on May 14, 2002. In that letter the inquiring party requested guidance on the tax status of taxable tangible personal property sold at a price below the retailer's cost. In response the letter stated that the Retailers' Occupation Tax Act, 35 ILCS 120/1 et. seq. (2000 bar Edition), imposes a tax upon persons engaged in the selling of tangible personal property to purchasers for use of consumption. The letter went on to state that the tax is measured by the seller's gross receipts, meaning the total selling price of the amount of sales. Finally, the letter stated that sales subject to the Retailers' Occupation Tax have been made when the retailer sells tangible personal property to customers for a particular dollar amount.

Accordingly, based on our interpretation of the Illinois rules and other rulings by state tax authorities stated above, we have made the following conclusion:

Scenario A – CLIENT would owe no additional Illinois Sales or Use tax since the discounted CPE was sold for a particular dollar amount above zero and was a sale for resale.

Scenario B – CLIENT would owe no additional Illinois Sales or Use tax since the discounted CPE was sold for a particular dollar amount above zero and sales tax was accordingly collected on the gross receipts of such sales.

Please provide guidance on whether our conclusions are correct for each of the Scenarios described above. In addition, we would appreciate the legal authority relied upon should your findings differ from our anticipated tax treatment.

Please respond to this request as soon as possible, so we can ensure that our client is in compliance. Thank you for your assistance with this matter.

#### **DEPARTMENT'S RESPONSE:**

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject to the request, the Department will decline to issue a letter ruling on the subject." 86 Ill. Adm. Code 1200.110(a)(3)(D).

Based on the latest email received by us from your firm we understand your client no longer wishes to obtain a response to Scenario B. After reviewing the materials your firm provided in connection with your request, the Department declines to issue a Private Letter Ruling with respect to Scenario A. It is the Department's position that its regulations at 86 Ill. Adm. Code 130.101, 130.201, 130.210, and 130.1405 are dispositive of the subject of your request, as are several PLRs and GILs that the Department has issued which can be found on the Department's website. Therefore, we are responding with this General Information Letter that we hope will assist you.

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. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. The retailer must pay Retailers' Occupation Tax to the Department based upon its gross receipts, or actual amount received, from the sale of the tangible personal property.

When a person purchases an item of tangible personal property with the intention of reselling it to a purchaser for use or consumption, that person engages in conduct equivalent to holding himself out as a retailer. This makes the initial purchase a purchase for resale, and the subsequent sale is a taxable sale at retail subject to Illinois Retailers' Occupation and Use Tax liabilities. See 86 Ill. Adm. Code 130.201 and 130.210.

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.

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 sales covered thereby were made for resale. In addition to the statement, a Certificate of Resale must contain:

- 1) The seller's 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; and
- 5) Registration Number, Resale Number, or Certification of Resale to out-of-State Purchaser.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (*i.e.*, it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided the above stated conditions are met. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois. 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.

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.

Very truly yours,

Richard S. Wolters  
Associate Counsel

RSW:mzk