

Section 3 of the Illinois Use Tax Act, 35 ILCS 105/3, imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. (This is a GIL).

January 8, 2009

Dear Xxxxx:

This letter is in response to your letter dated September 23, 2008, 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 represent a client located in a jurisdiction other than Illinois that operates a sole proprietorship and wishes to incorporate in Illinois. Our client is concerned as to whether or not he is required to pay either sales or use tax upon transferring his business and tangible assets to a new Illinois corporation to be formed solely in exchange for stock of that new corporation.

The assets consist of the following:

Cash;
Accounts Receivable;
Inventory held for resale;
Trucks;
Cranes;
Boats; and
Various tools and tooling.

All of the foregoing assets were acquired in jurisdictions other than Illinois and are currently located outside of Illinois. After incorporation in Illinois the assets will be moved to a home office to be located in Illinois and used, registered or titled in Illinois.

In the event the transfer to the Illinois Corporation solely in exchange for stock upon incorporation is a taxable transaction please provide me with appropriate references and authority.

Thank you in advance for your help and cooperation.

DEPARTMENT'S RESPONSE:

Due to the nature of your request and the limited amount of information contained in your letter, we can only refer you to sections of various acts and regulations that may be relevant to your client's proposed transfer of assets. The applicability of various taxes depends on the nature of your client's business and the location and timing of the transfer of any tangible personal property to the corporation.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail 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.

Generally, the transfer of tangible personal property to a corporation in exchange for stock is considered a sale.

The Illinois Administrative Code contains a regulation on occasional sales. See 86 Ill. Adm. Code 130.110. As a general proposition, the occasional sale exemption is only available when a person (as defined in Section 1 of the Retailers' Occupation Tax Act, 35 ILCS 120/1) purchases an item and then, after using the item, disposes of it by selling it. However, the sale will not qualify as an isolated or occasional sale if the person holds himself out as being engaged in the retail sale of that item or similar type of 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. Infrequent sales do not transform sales into occasional sales if the original objective of purchasing the items was to resell the items to purchasers for use or consumption. However, the corporation may give the individual a resale certificate for the inventory if the corporation acquires the inventory with the intention of reselling it. See 86 Ill. Ad. Code 130.210.

The Illinois Administrative Code contains regulations regarding the resale of tangible personal property (86 Ill. Adm. Code 1401 -1410) and exemptions to avoid multi-state taxation (86 Ill. Adm. Code 150.310).

Section 3 of the Illinois Use Tax Act, 35 ILCS 105/3, imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer, and this includes vehicles. The Use Tax liability includes tangible personal property brought into Illinois from out-of-State. Section 3-70 of the Use Tax Act provides that the tax imposed by the Act does not apply to the use, in this State, of tangible personal property that is acquired outside this State by a nonresident individual who then brings the property to this State for use here and who has used the property outside this State for at least 3 months before bringing the property to this State.

Section 3-70 of the Use Tax Act also provides that when a business that is not operated in Illinois, but is operated in another State, is moved to Illinois, that business shall not be taxed on its use in Illinois of used tangible personal property, other than items of tangible personal property that must be titled or registered with the State of Illinois or whose registration with the United States Government must be filed with the State of Illinois, that the business bought outside Illinois and used outside Illinois in the operation of the business for at least 3 months before moving the used property to Illinois for use in this State. 35 ILCS 105/3-70; 86 Ill. Adm. Code 150.315 (Non-resident Exemptions). See also 86 Ill. Adm. Code 150.310 (Exemptions to Avoid Multi-State Taxation).

Section 3-1001 of the Illinois Vehicle Code, 625 ILCS 5/3-1001, imposes a tax on the privilege of using, in this State, any motor vehicle acquired by gift, transfer, or purchase. With certain exceptions, the amount of tax is based upon the model year of the motor vehicle unless the selling price of the motor vehicle is \$15,000 or more. A flat tax rate of \$15 is imposed for each motor vehicle acquired in a transaction when a motor vehicle which has once been subjected to the Retailers' Occupation Tax or Use Tax is transferred in connection with the organization, reorganization, dissolution, or partial liquidation of an incorporated or unincorporated business wherein the beneficial ownership is not changed. 86 Ill. Adm. Code 151. The Vehicle Use Tax does not contain an exemption for isolated or occasional sales.

The Watercraft Use Tax is a privilege tax imposed on the privilege of using, in this State, watercraft acquired by gift, transfer, or non-retail purchase after September 1, 2004. The tax is imposed on the use of watercraft in this State regardless of whether the watercraft is actually registered under the Boat Registration and Safety Act. The rate of tax is 6.25% of the purchase price for each watercraft that is subject to tax under the Law. 35 ILCS 158/15-15. However, the purchase price shall not be less than the fair market value of the watercraft on the date the watercraft is purchased or the date the watercraft is brought into the State, whichever is later, unless the purchaser can document that a different value is reasonable. See 86 Ill. Adm. Code 153.110. The Watercraft Use Tax does not contain an exemption for isolated or occasional sales.

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.

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:mzk