

A temporary storage exemption from the imposition of use tax is available where tangible personal property is “acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State.” See 86 Ill. Adm. Code 150.310(a)(4). (This is a GIL).

January 14, 2009

Dear Xxxxx:

This letter is in response to your letter dated December 11, 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:

I represent a mining company that is based in LOCATION who is purchasing mining machinery and supplies in the USA. These goods will be purchased in 2009 but the mine site will not be ready to accept them immediately so they will be stored until the mine site is complete which may take several years.

The company does not operate in the United States and they would take title to the goods upon sale from the U.S. Manufacturers. They would utilize public storage until the goods could be exported overseas.

Can you please confirm if any of the following apply:

- Sales or use taxes if purchased in Illinois and held in storage
- Sales or use taxes if purchased outside Illinois and held in storage in Illinois
- Business Personal Property or Inventory or other tax for items held in storage temporarily in Illinois.
- Any other tax that might be assessed while the goods are in storage.

I would greatly appreciate your urgent advice as the client is making a decision on storage.

DEPARTMENT'S RESPONSE:

TEMPORARY STORAGE

A temporary storage exemption from the imposition of use tax is available where tangible personal property is "acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State." See 86 Ill. Adm. Code 150.310(a)(4).

As you can see, this exemption only applies to transactions in which the materials are acquired outside this State and after their temporary stay in Illinois are shipped out of Illinois and used solely outside Illinois. When the property is sold in this State or is located in Illinois at the time of sale, the temporary storage exemption does not apply. In that situation, that transaction would be an Illinois retail sale subject to Retailers' Occupation Tax liability. Temporary storage is not applicable in transactions where there is Retailers' Occupation Tax liability because the exemption is limited to situations where the only liability that can be involved is Use Tax. See 86 Ill. Adm. Code 150.310(b) which can be found on the Department's website.

In order to properly document the temporary storage exemption, the purchaser should give certificates to the seller which state that the tangible personal property is acquired outside Illinois and brought into Illinois only temporarily for storage, or for converting, fabricating, manufacturing, printing, processing, or shaping, and is subsequently shipped out of Illinois to be used solely outside the State of Illinois.

EXPANDED TEMPORARY STORAGE

Illinois Regulation 86 Ill. Adm. Code 150.310(a)(6) provides a sales and use tax exemption for personal property purchased from an Illinois retailer by a taxpayer engaged in centralized purchasing activities in Illinois who will, upon receipt of the property in Illinois, temporarily store the property in Illinois for the purpose of subsequently transporting it outside the State for use or consumption thereafter solely outside the State or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside this State and thereafter used or consumed solely outside this State. 86 Ill. Adm. Code 150.310(a)(6). 'Centralized purchasing' is defined as the procurement of tangible personal property by persons who purchase tangible personal property solely for use or consumption outside Illinois, who take delivery of that tangible personal property in Illinois and who temporarily store that tangible personal property in Illinois prior to transporting it outside the State for use or consumption solely outside Illinois.

Persons who wish to take advantage of this expanded temporary storage exemption must apply in writing to the Department to obtain an Expanded Temporary Storage Permit. Expanded Temporary Storage Permits cannot be assigned or transferred except when the holder of the permit is purchasing from an unregistered de minimis serviceman providing services as described in 86 Ill. Adm. Code 140.108. Other than this, only the person to whom the Expanded Temporary Storage

Permit was issued by the Department may use that permit as described in Section 150.310. 86 Ill. Adm. Code 150.310(a)(6)(C).

Persons holding a valid Expanded Temporary Storage Permit may claim the expanded temporary storage exemption by providing their Illinois suppliers with a certification that the tangible personal property received in Illinois will be temporarily stored in Illinois for the purpose of being subsequently transported outside this State for use or consumption thereafter solely outside this State or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside this State and thereafter used or consumed solely outside this State. The certification must identify the seller, the purchaser, and the property, and include the purchaser's Expanded Temporary Storage Permit number and signature. 86 Ill. Adm. Code 150.310(a)(6)(D).

If all of an Expanded Temporary Storage Permit holder's purchases qualify for the expanded temporary storage exemption, the Expanded Temporary Storage Permit holder may provide his or her supplier a blanket certificate of expanded temporary storage. If an Expanded Temporary Storage Permit holder knows that a certain percentage of all his or her purchases from a given seller will qualify for the expanded temporary storage exemption, he or she may provide a blanket certificate of expanded temporary storage stating that a designated percentage of purchases qualify for the expanded temporary storage exemption. 86 Ill. Adm. Code 150.310(a)(6)(D).

In the event that tangible personal property for which the expanded temporary storage exemption has been claimed is taken out of storage and not transported outside this State for use or consumption, but is instead used or consumed in Illinois, the purchaser shall pay the tax that would have been due, in the same form that the retailer would have paid the tax (i.e., Retailers' Occupation Tax and local Retailers' Occupation Tax, if applicable), at the rate applicable at the location of the retailer from which the tangible personal property was purchased. For example, if tangible personal property purchased from a retailer in Naperville is temporarily stored in Illinois, then, instead of being transported outside the State for use or consumption, is removed from inventory and used in Illinois, tax will be due at the retailer's rate applicable in Naperville. The permit holder must pay the tax directly to the Department on forms prescribed by the Department, not later than the twentieth day of the month following the month in which the property was removed from inventory. 86 Ill. Adm. Code 150.310(a)(6)(E).

In the event that tangible personal property for which the expanded temporary storage exemption has been claimed is temporarily stored in Illinois and transported outside this State for use or consumption, but subsequently returned to Illinois and used here, the purchaser shall pay the tax that would have been due, in the same form that the retailer would have paid the tax (i.e., Retailers' Occupation Tax and local Retailers' Occupation Tax, if applicable), at the rate applicable at the location of the retailer from which the tangible personal property was purchased. For example, if tangible personal property purchased from a retailer in Naperville is temporarily stored in Illinois and transported outside this State for use or consumption, but subsequently returned to Illinois and used here, tax will be due at the retailer's rate applicable in Naperville. Depreciation will be allowed as provided in Section 150.105(a). Also, credit shall be given for tax paid in another state in respect to the sale, purchase or use of the property, to the extent of the amount of the tax properly due and paid in the other state, as provided in subsection (a)(3) of Section 150.310. 86 Ill. Adm. Code 150.310(a)(6)(F).

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,

Debra M. Boggess
Associate Counsel

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