

When a construction contractor permanently affixes tangible personal property to real property, the contractor is deemed the end user of that tangible personal property. As the end user, the contractor incurs Use Tax on the cost price of that tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. (This is a GIL.)

April 1, 2009

Dear Xxxxx:

This letter is in response to your letter dated September 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](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 looking for an **informal** private letter ruling.*

*I have a general question in regards to out-of-state contractor. The situation is described below in a detail. Please let us know what the process should be. Please provide us as much information as possible.*

Our client is a STATE-based company that manufactures metal buildings for commercial use. All manufacturing occurs in STATE. Once the building is manufactured it goes in one or two sections onto a truck and is shipped via common carrier to various other states, including your state.

About 25% of the time our client installs (or supervises the installation of) buildings in your state. (The rest of the time the buildings are sold uninstalled and treated as retail sales. Sales tax is collected on these sales and remitted to your state.)

When the building is installed it is anchored to a concrete foundation. Various services (electrical, HVAC, occasionally plumbing) are then connected. In general, the buildings are intended to be permanent but in some cases may be moved and reinstalled

elsewhere. Disengaging the building from its foundation would typically not harm the building.

Typical buildings have a standard shell but may or may not be configured inside for a particular installation or customer use. Types of buildings our client sells include utility buildings, cellcom buildings, school buildings, and other types of metal structures.

Contracts for the building typically list a cost for the building itself, and then alternate costs for various configurations of the building and its internal components. Site work and installation are listed and priced separately. In some cases, the contract agreed upon includes site work and installation (separately stated) but occasionally the site work and installation are contracted for completely separately.

Questions:

1. When our client installs a building in your state, is that sale treated as the sale of tangible personal property, or is the sale considered real property construction, subject to use tax?
2. Under your state's rules, is the contract as described above a time and materials contract, or a lump-sum contract? Does it make any difference for tax purposes?
3. Under your state's rules, does the tax treatment of an installed building differ depending on the type of building? In STATE, for example, installed buildings used to house cellcom tower equipment on leased land are not treated as the sale of real property but as the sale of tangible personal property.
4. If the building is treated as a construction contract, what is the measure of use tax?

*I appreciate your help in this matter.*

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

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.

A contract to incorporate tangible personal property into real property is considered a construction contract. The tax liabilities regarding construction contractors in Illinois may be found at 86 Ill. Adm. Code 130.1940 and 130.2075 on the Department's Internet website. The term construction contractor includes general contractors, subcontractors, and specialized contractors such as landscape contractors.

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, these contractors incur Use Tax liability for such purchases based upon their cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. Therefore, any tangible personal property that a construction contractor purchases that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If such contractors did not pay the Use Tax liability to their suppliers, those contractors must self assess their Use Tax liability and pay it directly to the Department. If the contractors have already paid a tax in another state regarding the purchase or use of such property, they will be entitled to a credit against their Illinois Use Tax liability to the extent that they have paid tax that was properly due to another state. See 86 Ill. Adm. Code 150.310.

Generally, the tax treatment does not differ depending on the type of building or real estate the tangible personal property is affixed to. Furthermore, since the construction contractor are deemed end users of tangible personal property purchased for incorporation into real property and as end users of such tangible personal property incur Use Tax liability for such purchases, it generally does not matter whether the construction contractor charges for his or her work on a time-and-material basis or on a lump-sum basis. However, purchases of tangible personal property by a construction contractor for incorporation into the real estate owned by an exempt organization or governmental entity that posses a valid "E" number at the time of sale may be made free of Illinois Retailers' Occupation Tax and Use Tax under the provisions of 86 Ill. Adm. Code 130.2075(d). In claiming the exemption from tax, the construction contractor must provide its supplier with a certification stating that its purchases are for conversion into real estate under a contract with an exempt organization or governmental entity, identifying the organization or entity by name and address and stating on what date the contract was entered into. The construction contractor must also provide the "E" number issued by the Department to the organization or entity for which the purchasing contractor is acting. See 86 Ill. Adm. Code 130.2075(d)(4).

The Illinois Use Tax rate incurred by an out-of-State construction contractor on purchases of materials from an unregistered supplier located outside of this State is generally 6.25% as described in subsection (c) of Section 130.2075. It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as "sales tax," but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor's part.

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  
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