

The Service Occupation Tax is a tax imposed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

April 1, 2009

Dear Xxxxx:

This letter is in response to your letter dated September 18, 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:

A company (called Company X in this memo) provides design and consulting services for architectural firms, engineering firms, contractors, churches and other organizations in your state. Company X is interested in knowing your state's sales and use tax treatment of the services described below. Please send your response to me by email.

Facts:

Company X provides design and consulting services relating to sound and video systems, including acoustics, equipment, layout, etc. to architectural firms, engineering firms, contractors, churches and other organizations. If Company X's design and consulting services relate to an existing building or outdoor facility, Company X may tour the building or outdoor facility. A written report is provided by Company X which includes such information as the type and placement of acoustics, type of equipment, placement of equipment, etc.

Questions:

1. Are the above services provided by Company X subject to (a) your state's sales and use taxes, and (b) any local sales or use taxes (e.g. county or city sales and use taxes)?

2. If the answer to question 1 is the services are taxable, would the services be taxable if Company X's customer was a public grade or high school, private grade or high school, church, state college or university, state of Illinois, city, village or township, or a non-profit organization which is exempt under section 501(c)(3) of the Internal Revenue Code? If the sale of the services would be exempt, what kind of documentation is needed by Company X to prove that the sale is exempt?

As mentioned above, it would be appreciated if you would respond by email.

Thanks for your assistance.

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. 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then neither Illinois Retailers' Occupation Tax nor Use Tax would apply. Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to customers incident to the services being provided, however, then no Illinois Service Occupation Tax nor Service Use Tax would apply.

Sales of Service

For your general information, I direct your attention to the Department's regulations at 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax., which can be found on the Department's website.

Under the Service Occupation Tax Act, businesses providing services (*i.e.* servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon his activities. The serviceman's liability may be calculated in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's 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 the sale of service. The tax is then calculated on the separately-stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. 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. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

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. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

The provision of design and consulting services that does not include the transfer of tangible personal property with the provision of such services does not result in Service Occupation Tax or Use Tax liability. The transfer of any tangible personal property such as, for example, written reports and tangible media (CDs) incident to a sale of service would be subject to liability under one of the four methods described above.

Exempt Organizations

Organizations that are recognized as non-profit under Internal Revenue Code Section 501(c)(3) or which would otherwise qualify for tax-exempt status on its purchases of tangible personal property for use or consumption cannot make tax-free purchases unless it has an active exemption identification number issued by the Department. See 86 Ill. Adm. Code 130.2007 and 140.125(h). Such organizations must obtain an exemption identification number (an "E" number) to qualify. See 86 Ill. Adm. Code 130.2007.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an "E" number. The "E" number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax.

Companies selling tangible personal property or transferring tangible personal property incident to sales of service to these organizations must be provided with an "E" number for the sales to be tax exempt, unless another exemption can be documented.

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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