

Persons who engage in the business of selling monuments, grave markers and the like to purchasers for use or consumption and not for resale incur Retailers' Occupation Tax liability on their receipts from such sales. See 86 Ill. Adm. Code 130.2130. (This is a GIL).

May 29, 2009

Dear Xxxxx:

This letter is in response to your letter dated November 7, 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.

In your letter you have stated and made inquiry as follows:

We are requesting a private letter ruling for our client. Currently CLIENT is not under audit and there is no litigation pending with the Illinois dept of Revenue or any other taxing authority. The request for this letter ruling is to clarify procedures for future reporting periods. CLIENT has had several questions regarding the taxability of installed monuments from their clients; some of these clients believe no sales tax should have been charged because the monuments are becoming permanent fixtures to their real estate. Apparently several other states do not tax such sales. For your convenience we have included copies of several completed contracts from CLIENT along with their supporting terms and conditions as detailed on the reverse of each contract. In addition we have included a copy of a letter ruling from the state of Missouri that was resented from one of their clients.

CLIENT is an Illinois corporation that fabricates and installs monuments as well as other types of grave markers who also sells other misc. related items that are not installed or attached to the monument or grave marker in any way. On occasion, CLIENT will fabricate and sell a monument or marker that will not be installed by them. CLIENT will also perform engraving services for existing monuments or markers as requested; these services are performed in the cemeteries where the monuments or markers are already permanently attached to the cemetery plots via concrete foundation.

When installation of the monument or grave marker is part of the contract, which would encompass the vast majority of their sales, the monuments or grave markers become permanent structures attached to secure concrete foundations on the real property (cemetery plots) of their customers. In these instances the terms of the contract specifically pass title & ownership of the monuments or grave markers to the customer upon permanent and complete installation as fixtures to real estate. Due to the size and weight of the monuments or stones being installed special equipment and tools are required to complete the installation process, most people are not going to be able to move, handle or install the products on their own.

On a very rare occasion CLIENT will fabricate and install a monument or grave marker for a customer who will issue a resale certificate. In these situations their client is most likely going to be a funeral home, which is going to resell the monument or marker to their client. Other than engraving a name on the stone, CLIENT will not even know who the final customer is. For these transactions the terms of the contract specifically pass both title and ownership of the monument or grave marker as tangible personal property prior to the installation being completed.

Currently, CLIENT remits Retailers' Occupation tax (sales tax) on all of their taxable material sales (which include fabrication and installation) unless a resale or exemption certificate has been issued and they are questioning the accuracy of this policy for their installed sales. Obviously, the sales of non-installed items are not part of this letter ruling, they are only mentioned to give you a full and complete picture of the type of transactions CLIENT is completing.

### **Questions:**

1. Based on the circumstances presented in paragraph 3 and the terms of their contract as detailed in paragraph 1 on the reverse side or their contract (copies of which are attached), are the sales of installed monuments and grave markers by CLIENT subject to Retailers' Occupation tax as sales of tangible personal property or should they be taxed as a construction contractor?
2. For those situations detailed in paragraph 4 and based on the terms of their contract as detailed in paragraph 2 on the reverse of their contract, can a resale certificate be accepted even though installation is part of the contract since title is specifically passing prior to installation as tangible personal property?

After a thorough and exhaustive review of the Illinois sales and use tax laws and regulations, we have developed our opinions regarding these issues but we were unable to find a definitive answer for these questions. In effort [sic] to help in your research we are listing and including copies of the Regulations we found while researching these issues and our thoughts regarding each regulation, hopefully this will help with your research.

**Regulation 130.2150 Vendors of Memorial Stones and Monuments** seems to apply to the transactions in Paragraph 4 and for those sales of Monuments and grave markers that do not include installation, however this regulation does not seem to apply to those transactions as outlined in paragraph 3 because CLIENT Works is not operating as a vendor in these situations because they are **not** making sales of tangible personal property.

**Regulation 130.1940(C) Construction Contractors - when not liable for tax** seems to be more appropriate for the sales transactions as outlined in paragraph 3. This paragraph states 'A construction contractor does not incur Retailers' Occupation Tax liability as to receipts from labor furnished and tangible property (materials and fixtures) incorporated into a structure as an integral part thereof for an owner when furnished and installed as an incident of a construction contract.' Since the terms of CLIENT contract specifically pass title and ownership for installed goods after installation as fixtures to real estate it would seem this regulation would be directly on point.

**Regulation 130.120 Non Taxable transactions - The tax does not apply to receipts from sales:** section (b) of this regulation again seems to be directly on point with the sales transactions as outlined in paragraph 3. This section specifically list [sic] as non taxable transactions sales of 'real property, such as lands and buildings that are permanently attached to the land;' Since the monuments and grave markers are mounted via concrete foundations it sounds like they meet the definition of permanently attached.

**Letter ruling ST 05-0004-PLR from the state of Illinois** - This letter ruling deals with a company who made, sold and installed marble and granite counter tops who was deemed to be a construction contractor. The facts of CLIENT transactions appear to mirror the transactions performed in this letter ruling when installation is part of the contract. The only difference is the final product being installed, both products (marble countertops and marble monuments or markers) require fabrication, with special skills and tools required to complete the installation process.

**Letter ruling 4784 from the state of Missouri** - This letter ruling seems to be directly on point and it is very clear that sales transactions as outlined in paragraph 3 would be taxed as those of a construction contractor in the state of Missouri.

In our opinion CLIENT has incorrectly computed, collected and remitted Retailers' Occupation Tax for their installed sales transactions while they correctly computed, collected and remitted this tax for all of their taxable non-installed transactions. We believe, and it only makes sense, that the clear intent of a customer would be to have a permanent structure erected on their plot of ground if installation was part of their contract, nobody would want to purposely replace or re-erect a monument if it is avoidable. Once we receive a response from your department we will make the necessary adjustments in our system to correctly calculate the appropriate sales or use taxes for each and every type of transaction effecting CLIENT.

There are no specific trade secrets requested to be deleted from the ruling.

Your help and opinion regarding this matter is greatly appreciated and obviously if you have any questions please feel free to call anytime. Enclosed you will find a completed IL-2848 Power of Attorney so that you can contact me directly with any questions or concerns regarding this request.

#### **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). Further, 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).

It is the Private Letter Ruling Committee’s position that its regulation at 86 Ill. Adm. Code 130.2150 and 86 Ill. Adm. Code 130.450 are dispositive of the subject of your request, as are several GILs that the Department has issued which can be found on the Department’s website. Therefore, we are responding with this General Information Letter. The following information may be helpful.

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. 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.

The Department rule regarding persons that sell memorial stones and monuments states, in part:

“Persons who engage in the business of selling monuments, grave markers and the like to purchasers for use or consumption and not for resale incur Retailers' Occupation Tax liability on their receipts from such sales whether such items are sold as stock or standard items, or whether such items are produced on special order by the seller for the purchaser. Such items, when produced on special order, serve substantially the same function as stock or standard items that are sold at retail.”

See 86 Ill. Adm. Code 130.2150 (Vendors of Memorial Stones and Monuments). Generally, persons who engage in the business of selling monuments, grave markers and the like to purchasers for use or consumption and not for resale are considered retailers and incur Retailers' Occupation Tax liability on their receipts from such sales.

When a seller engages in the business of selling tangible personal property at retail, and such tangible personal property is installed by the retailer, the receipts from such installation charges must be included in the gross receipts upon which the Retailers’ Occupation Tax liability is measured if such installation charges are included in the selling price of the property being sold. If, however, the seller and buyer agree upon the installation charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation charges are not a part of the "selling price" of the tangible personal property which is sold. Instead such charges constitute a service charge, separately contracted for, which need not be included in the figure upon which the seller computes his Retailers’ Occupation Tax liability. See Section 130.450.

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) the 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  
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