

This letter provides general information on sales taxes. See 86 Ill. Adm. Code 130.101, 150.101, and 140.101 through 140-109. (This is a GIL.)

August 3, 2009

Dear Xxxxx:

This letter is in response to your letter dated June 10, 2009, 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:

Our company is headquartered in CITY/STATE and I have recently been hired as the Controller of COMPANY located at our CITY Illinois office. We design, engineer, manufacture and warehouse point of purchase displays. Thru investigation and the learning of our business I have discovered that thru nexus we may have an obligation to collect and remit sales tax on shipments to Illinois addresses. I do not know what the rules are for charging sales tax, what the appropriate tax rate(s) should be, how often should we need to file a return, etc. Please contact me so that we can discuss what needs to be done to ensure compliance with our Illinois sales tax obligations. My contact information is as follows:

DEPARTMENT'S RESPONSE:

For general information purposes, the Illinois sales and use tax system is unique because it codifies four separate taxes: The Retailers' Occupation Tax, (86 Ill. Adm. Code 130.101 et seq.), the Use Tax, (86 Ill. Adm. Code 150.101 et seq.), the Service Occupation Tax, (86 Ill. Adm. Code 140.101 et seq.), and the Service Use Tax, (86 Ill. Adm. Code 160.101 et seq.).

Sales Tax

The Illinois Retailers' Occupation Tax Act imposes a tax at a rate of 6.25% 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 at a rate of 6.25% 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.

Service Occupation Tax

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service. If tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Service Use Tax liability at the rate of 6.25% for the servicemen depending upon his activities. However, if no tangible personal property is transferred incident to the sales of service, the Service Occupation Tax and Service Use Tax do not apply. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service. The registration requirements for servicemen may be found at 86 Ill. Adm. Code 140.601.

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 servicemen 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.

Local Taxes

In general, the imposition of the various local sales taxes in Illinois takes effect when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See the Department's regulation at 86 Ill. Adm. Code 270.115(b), which can be found on the Department's website. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred.

If a purchase order is accepted outside the State, but the property being sold is located in an inventory of the retailer which is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. In situations in which the retailer has nexus, but both the purchase order acceptance and the location of the property being purchased are outside of the State of Illinois, such sales would only be subject to the Illinois Use Tax at the rate of 6.25%. Although the regulation cited above (86 Ill. Adm. Code 270.115) deals with the municipal home rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department. Tax rates for local taxes that the Department administers are available on the Department's web site under the tab "Tax Rate Finder". For information regarding local taxes not administered by the Department, you may contact local jurisdictions.

Registration

It is unlawful for any person to engage in the business of selling tangible personal property at retail or making taxable sales of service in this State without a certificate of registration from the Department. See 86 Ill. Adm. Code 130.701 and 86 Ill. Adm. Code 140.601. There is no dollar threshold for registration. A person registered to engage in the business of selling tangible personal property at retail or making sales of service in this State must file periodic returns. See 86 Ill. Adm. Code 130.501, 130.502, 130.510, 140.401 and 140.405. For more information, you may want to call the Department's Central Registration Department at (217) 785-3707.

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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