

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

September 3, 2009

Dear Xxxxx:

This letter is in response to your letter dated April 22, 2009 which was received by our Springfield, Illinois office on July 8, 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:

COMPANY is a manufacturer of motor fuel dispensing equipment domiciled in the STATE. Although we have no nexus in any other state, we are registered to collect and remit sales/use tax in all states, with the exception of Alaska.

To compliment our business we offer a variety of services to our customers. COMPANY maintains a service desk/call center, 24-7, at our manufacturing facility located in CITY/STATE. It is from this desk that all of these services are performed.

COMPANY would like to confirm the tax treatment of each of the following (4) types of service by the state of Illinois. Specifically, at which location does the state consider the tax situs: at the point where service is performed or the location at which benefit is received?

- 1. Help Desk** – A call center at which our associates receive phone calls from our customers when they have issues with our product. The help desk is limited to talking the customer thru issues. If issues cannot be resolved over the telephone, the call is transferred to our service desk for further assistance. The service desk will dispatch a 3rd party authorized service technician to the site.
- 2. General Regulatory Compliance** – Provide the following services per customer request:

- a) Apply for, renew and pay for contracted regulatory permits, placards and applicable registrations on behalf of the customer.
- b) Maintain accurate electronic documents within our database (database is located at our facility in STATE).
- c) Provide customer internet access to needed documents within our database. (Via secured password access).
- d) Facilitate the following and coordinate with State regulatory agencies (including: EPA.):
 - a. New Construction
 - b. Temporary closure
 - c. Tank Removal
 - d. Raze and Rebuild
 - e. Property Sales
 - f. Property Transfers
- e) Coordinate Tank testing & inspections by 3rd party authorized service technicians.
- f) Execute Power of Attorney to act as authorized agent for customer.
- g) Management fees: Charged by site to manage the aforementioned.
- h) Designated Operator: Inspect locations per California ICC requirements (Specific requirement to California) – inspection performed by 3rd party contractors.

3. Underground (Fuel) Storage Tank Monitoring Services

- a) Alarm Management and Reporting: Remote monitoring of alarm events. Alarms automatically dial out to our location in CITY/STATE with alarm details.
 - a. ALARM REPORTING ONLY: Alarm details are automatically archived and Customer is notified via email of each alarm event.
 - b. ALARM MANAGEMENT: In addition to customer notification, the 24 x 7 Call Center technicians will troubleshoot each alarm in an attempt to resolve the alarm as soon as possible. If troubleshooting proves to be unsuccessful, the technician will employ the customer's defined procedure to notify the customer or a designated, 3rd party Authorized Service Technician to be dispatched to the site to resolve the alarm locally. Reports are displayed and can be viewed by the customer using a web based reporting system we maintain online. Email notifications are also available.

4. Compliance Management Services:

The following compliance services are available to our customers. Remote polling is accomplished in one of two ways. We either poll the site by accessing the customer's network IP address or by using a modem. The method is chosen by the customer.

Descriptions of how the resulting information is dispatched to the customer are listed in the service descriptions below:

- a) Compliance Reporting: Remote polling of fueling sites to collect, store and report test system compliance test results for each tank, line and sensor enrolled in the service. COMPANY will setup, activate and maintain customer site in its database indefinitely, and provide reports for each site in COMPANY's web portal.
- b) Compliance Management: Remote polling of fueling sites to collect, store and report test system compliance test results for each tank, line and sensor enrolled in the service. As part of the Compliance Monitoring, Diagnosis and Dispatch Management modules, COMPANY will identify, remotely diagnose, troubleshoot and attempt to resolve problems remotely to deliver valid leak detection (line, tank, and sensor) results reports. If the service desk is unable to resolve the problem and determines that an on-site visit (a.k.a. dispatch) is required, he/she will notify and dispatch a 3rd party, authorized service technician to the site. COMPANY will setup, activate and maintain customer site in its database indefinitely, and provide reports for each site in COMPANY's web portal.
- c) Inventory Planning: COMPANY will automatically collect inventory data from all enrolled sites based on the customer's defined reporting frequency. COMPANY will employ greed upon methodologies including automated polling, web data entry, direct file interface, or an automated voice response system. COMPANY will consolidate the available data onto one report or data file as applicable. The data is provided in an electronic file format (.pdf, .html, .csv).
- d) Poll Now Inventory: COMPANY provides customer with direct access to its web portal so that the customer may dial into his/her site and get real-time fuel inventory data. A report is generated by the web portal which includes numerical data as well as a graphical representation of fuel level, empty space in the tank and water levels.
- e) SYSTEM: The system provides a means of automating the inventory reconciliation process mandated by many of the state regulatory agencies. The system collects and reconciles sales, inventory, and delivery data from equipment at the site. COMPANY will report the results of product inventory reconciliation and notify the customer when preset thresholds have been exceeded via COMPANY's web portal.
- f) In-station Diagnostics: Remote vapor monitoring for the entire tank system as required by the California Air Resources Board (CARB). Customer will be notified when any system falls below the required vapor recovery capacity.
- g) Daily Loss Advisor: Remote polling of the ITEM and collection of hourly inventory, delivery, and sales information. Upon detection of a fuel variance that has exceeded the customer's defined acceptable threshold; a trained service desk associate will conduct a detailed root cause investigation to determine the actual source of the fuel variance. The

associate will also identify the recommended action(s) required to resolve the variance and work with the customer's assigned focal point until the resolution is complete and the fuel variance is within the customer's acceptable threshold. Customer is contacted via telephone call as well as reports on shown online via COMPANY's web portal.

We would greatly appreciate your response to our request. We are continuing to add services to our offerings and must make sure that we are correctly applying sales/use tax to these transactions.

Thank you in advance for your time and assistance with this issue.

DEPARTMENT'S RESPONSE:

We are sorry that we cannot answer your letter in the format you requested, but we believe that the following information may assist you in determining whether the services your corporation provides are subject to tax.

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 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

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 do not 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 a 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.

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,

Terry D. Charlton
Senior Counsel, Sales & Excise Taxes

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