

An auctioneer acting on behalf of an unknown or undisclosed principal is responsible for Retailers' Occupation Tax on the gross receipts from the sale. However, if the auctioneer is acting on behalf of a known or disclosed principal, the sale of tangible personal property is taxable to the principal and not the auctioneer if the principal is a retailer of the tangible personal property being sold at the auction. See 86 Ill. Adm. Code 130.1915. (This is a GIL).

July 5, 2011

Dear Xxxxx:

This letter is in response to your letter dated February 21, 2011, 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 respectfully request a letter ruling to confirm the sales tax treatment of the issues described below regarding whether AUCTIONEER is required to collect and remit tax on the administrative fees the Auctioneer charges buyers of tangible personal property at the Auctioneer's public auctions.

## **FACTS**

Auctioneer is in the business of selling both new and used tangible personal property through unreserved public auctions. Auctioneer regularly sells industrial equipment, motor vehicles, agricultural equipment, and other tangible personal property. The auctions take place throughout the year at a location within the state. The owner of the tangible personal property (hereinafter 'the Consignor') consigns the tangible personal property to Auctioneer for the auction process while retaining the title to the tangible personal property. Auctioneer acts as a selling agent for the Consignor and acquires a power of attorney for the limited purpose of executing all documents required for a title transfer and registration, without any further action of the Consignor. In addition to selling property that is owned by a Consignor, Auctioneer also purchases tangible personal property in its own name to auction

All sales made at the auction are final and sold 'as is'. Auctioneer does not deliver or arrange for delivery of any purchases. All buyers must remove the property from the location of the auction.

Auctioneer charges all buyers sales tax on the selling price of the auctioned tangible personal property and remits the sales tax to the State unless the buyer produces the applicable resale certificate, exemption certificate, or other acceptable documentation.

Potential buyers may bid on items at the auction in person, bid by submitting a proxy, or bid for the items over the internet through the Auctioneers [sic] website. Buyers could be resident [sic] of the state of the auction, resident [sic] of a different state, or resident [sic] of a different country.

The Auctioneer is considering a new fee structure where all buyers will be charged an administrative fee equal to 10% of the selling price for items selling for \$2,500 or less; and 2.5% of the selling price for items selling for greater than \$2,500, up to a maximum of \$950 per item purchased. The administrative fee will be separately stated on the buyers [sic] invoice. The only exception to this fee will be on-site buyers purchasing equipment from an auction conducted on a farm. These buyers will not be charged the administrative fee.

The purpose of the administrative fee is to compensate Auctioneer for the many value added [sic] services that are available to buyers. Buyers at AUCTIONEER have an array of value added [sic] services available to them. These services are available to all buyers, however, buyers have no obligation to use them. Some of the services are as follows:

- Auctioneer offers potential buyers the opportunity to inspect items either on the internet or at the auction site;
- Auctioneer guarantees clear title to the buyer and offers a full refund if clear title is not passed to the buyer;
- Access to an on-line bidding system;
- Access to a 21 language website which offers a host of services including an upcoming auction calendar, equipment inventory searching, equipment specifications including high resolution photos, historical auction results, and shipping arrangements;
- Referrals to preferred shipping vendors;
- Referrals to preferred financing vendors;
- Referrals to preferred insurance vendors;
- Referrals to preferred extended warranty vendors;
- Internet Wi-fi access at the auction site during the auction;
- Auctioneer may assist with loading property onto the buyers' [sic] vehicle;
- Provide ID cards to streamline buyer registration at the auction.

## **ISSUES**

1. Is Auctioneer required to collect and remit sales tax on the 10% administrative fee for lots sold to buyers for a price \$2,500 or less?
2. Is Auctioneer required to collect and remit sales tax on the 2.5% administrative fee for lots sold to buyers for a price greater than \$2,500?
3. If Auctioneer is required to collect and remit sales tax on the fees, then can Auctioneer accept a resale or exemption certificate to relieve the obligation to collect and remit sales tax?

We kindly request a letter ruling to confirm the sales tax treatment of the above issues. We appreciate your time and attention in this matter. Should you have any questions, please contact me.

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

When auctioneers are involved in selling activities, the person who is liable for Retailers' Occupation Tax will depend on whether the auctioneer is working on behalf of a disclosed or undisclosed principal. An auctioneer acting on behalf of an unknown or undisclosed principal is considered to be the owner of the tangible personal property that will be auctioned and is responsible for Retailers' Occupation Tax on the gross receipts from the sale, as well as filing a sales tax return. However, if the auctioneer is acting on behalf of a known or disclosed principal, the sale of the tangible personal property is taxable to the principal and not the auctioneer. A principal is deemed to be disclosed to a purchaser for use or consumption only when the name and address of such principal is made known to such purchaser at or before the time of the sale and when the name and address of the principal appears upon the books and records of the auctioneer or agent. See subsection (b) of Section 130.1915. Please be advised, however, that if the tangible personal property sold would constitute an occasional sale by the disclosed principal, then the sale is not taxable. See 86 Ill. Adm. Code 130.110 ("Occasional Sales").

If an auctioneer makes a sale for an undisclosed principal, then the auctioneer is responsible for Retailers' Occupation Tax on the gross receipts from the sale. Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. The term "selling price" is defined under the Retailers' Occupation Tax Act as the "consideration for a sale valued in money . . . and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever . . ." See 35 ILCS 120/1. As indicated by this definition, a retailer's cost of doing business is not deductible from his gross receipts. This principle is also articulated in 86 Ill. Adm. Code 130.410. The regulation specifically states that in calculating Retailers' Occupation Tax liability, "freight or transportation costs . . . or any other expenses whatsoever" are not deductible from gross receipts. The tax is based upon the total selling price, including any administrative fees that may be charged. If a sale is exempt from tax as a sale for resale or because the purchaser can validly claim some other exemption, then an administrative fee charged as part of that sale is also exempt.

If an auctioneer makes a sale for a disclosed principal who is a retailer of the tangible personal property being sold at the auction, then, the disclosed principal is responsible for Retailers' Occupation Tax on the gross receipts from the sale. In this situation the administrative fee would be included in the principal's sales tax base, since the consideration for the sale includes the administrative fee.

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.

Sincerely,

Samuel J. Moore  
Associate Counsel

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