

This letter discusses the Department's regulation for sales of containers, wrapping and packing materials and related products as set forth at 86 Ill. Adm. Code 130.2070. (This is a GIL.)

September 23, 2011

Dear Sir or Madam:

This letter is in response to your letter dated July 14, 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:

ABC hereby requests a Private Letter Ruling regarding the application of Illinois' Retailers' Occupation Tax to its purchases of pallets, shipping containers for products, slip sheets and assorted packing, wrapping, and bracing materials.

***Statement of facts:***

ABC is an automotive chemical manufacturer that delivers liquid products to both domestic and international customers. As virtually all of ABC's customers either use ABC's products to add to their own products in their manufacturing processes or resell the products they purchase from ABC and since said customers have issued sales and use tax exemption certificates to ABC, virtually all sales are exempt from the Retailers' Occupation Tax.

Although ABC uses bulk truck shipments to deliver many finished products to customers, some of ABC's finished fluid products are packed into drums, totes, and small closed pails for shipping. Shipments of drums and pails are secured onto pallets, and various packaging materials including steel banding and crimp clips, various wrapping materials, protective cardboard corners, wooden bracing, slip sheets, and other consumable materials used in the shipping industry to secure loads within shipping containers and trailer trucks are used to secure the containers to the pallets and/or to secure the palletized goods or totes into container trucks.

Ownership of all containers, packaging, wrappings, bracing materials, slip sheets, and pallets are transferred to ABC's customers, and said items are not directly billed to customers nor are deposits for such materials sought or collected. Instead, customers are billed according to the volume of fluid product included in the shipment. While pallets are reusable; none of the packaging, wrapping, or bracing materials are believed to be reusable. ABC believes that many containers are scrapped although some may [sic] disposed of or sold to be cleaned and resold.

***Contracts, licenses, other relevant documents:***

None.

***Tax periods at issue, statement whether there is ongoing audit or litigation:***

The tax periods at issue at those periods not yet closed due to statutes of limitations, or approximately 2009, 2010, 2011 and all future tax periods. There is no ongoing audit or litigation between ABC and the Illinois Department of Revenue.

***Statement whether the IDOR has previously ruled on this matter:***

To the best knowledge and belief of ABC, the IDOR has not previously ruled on this matter or any similar matter for ABC.

***Authoritative statements in support of the taxpayer's position:***

ABC believes that its purchases of containers, packaging materials, wrappings, bracing materials, slip sheets, and pallets should be exempt from Illinois' Retailers' Occupation Tax and cites the following authoritative references in support.

86 Illinois Administrative Code, Chapter 1, Section 130.2070 (b) (1) states:

Sellers of containers to purchasers who sell tangible personal property contained in such containers to others are deemed to make sales of such containers to purchasers for purposes of resale, the receipts from which sales are not subject to the Retailers' Occupation Tax, if the purchasers of such containers transfer the ownership of the containers to their customers together with the ownership of the tangible personal property contained in such containers.

Section 130.2070 (a) provides a definition of containers as follows:

When used in this Section, the term 'containers' includes all containers, wrapping and packing materials, bags, twines, container handles, wrapping papers, gummed tapes, cellophane, boxes, bottles, drums, cartons, sacks or other packing, packaging, containing and wrapping materials in which tangible personal property may be contained.

As previously explained, with each sale, ABC does indeed transfer the ownership of the containers, packaging materials, wrapping materials, bracing materials, slip sheets, and pallets used to ship its finished products without an itemized charge for said materials. While these aforementioned materials used not [sic] to directly contain products but to

secure them to other shipping materials or within a container truck are not specifically listed as qualifying for exemption from Retailers' Occupation Tax, such materials are intimately related to the container materials included in the definition found in Section 130.2070(a) as they are as necessary for safely transporting the products placed within the actual vessels holding the fluid products as are the vessels themselves. These materials are, in effect, additional wrapping and packaging materials, both in their nature and function as materials used to secure tangible personal property and prepare it for shipment.

***Statement of Authorities contrary to taxpayer's position:***

86 Illinois Administrative Code, Chapter 1, Section 130.2070 does not specifically include pallets, slip sheets, or consumable wrapping, packaging, and bracing materials used to secure containers holding tangible personal property onto pallets and pallets or totes within a container truck in its definition of containers.

No other contrary authoritative sources are known.

***Trade Secrets:***

No trade secrets are contained within this letter, however, ABC requests that its name, address, and references to the specific industry in which it is engaged be redacted from any public release of a Private Letter Ruling.

***Conclusion***

From the authoritative references above, ABC believes that its purchases of pallets and containers as well as packaging materials, slip sheets, wrappings, and consumable packing and bracing materials used to secure containers holding tangible personal property onto pallets and palletized loads or totes securely within a container truck are exempt from Illinois' Retailers' Occupation Tax. ABC, hereby, respectfully requests a Private Letter Ruling from the IDOR to this effect.

**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). The Department declines to issue a Private Letter Ruling. The regulations are clear on the issue contained in your request. 86 Ill. Adm. Code 1200.110(a)(3)(D).

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. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse

themselves for their Retailers' Occupation Tax liability incurred on those sales. If the retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

The Department's regulation governing "Sales of Containers, Wrapping and Packing Materials and Related Products," is set forth at 86 Ill. Adm. Code 130.2070. The sale of tangible personal property for the purpose of resale is not taxable so long as the purchaser provides the seller with a Certificate of Resale in accordance with 86 Ill. Adm. Code 130.1405. Please note that sellers of containers to purchasers who sell tangible personal property contained in such containers to others are deemed to make sales of such containers to purchasers for purposes of resale, the receipts from which sales are not subject to the Retailers' Occupation Tax, if the purchasers of such containers transfer the ownership of the containers to their customers together with the ownership of the tangible personal property contained in such containers.

"Containers" includes all containers, wrapping and packing materials, bags, twines, container handles, wrapping papers, gummed tapes, cellophane, boxes, bottles, drums, cartons, sacks or other packing, packaging, containing and wrapping materials in which tangible personal property may be contained. 86 Ill. Adm. Code 130.2070(a). Pallets fall within the definition of "container", as evidenced by the example provided in the Department's regulations, and may be purchased for resale if ownership of the pallets also passes to the purchaser. See Section 130.2070(b)(2).

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,

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