

ST 14-0035-GIL 07/29/14 FINANCIAL INSTITUTIONS

Lending agencies or finance companies may be subject to Retailers' Occupation Tax liability on the sale of repossessed tangible personal property. See 86 Ill. Adm. Code 130.1960(a) and 86 Ill. Adm. Code 130.110. (This is a GIL.)

July 29, 2014

Dear Xxxx:

This letter is in response to your letter dated April 28, 2014, 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:

This office represents a large national bank which maintains offices in Illinois and throughout the United States ("Bank"). In 2007, one of the Bank's borrowers pledged its business assets to Bank as security for a business loan. After the borrower defaulted, Bank foreclosed its security interest in certain of these assets comprising of furniture and accessories associated with a now-closed nursery school. Bank thereafter sold these business assets to a third-party for \$x,xxx.xx. In connection with this sale, Bank collected \$xxx from the purchaser for sales tax to be remitted to the State of Illinois.

Title 86, Part 130, Section 130.110 sets forth the applicable regulations relating to "occasional sales" that are exempted from collection and remittance of sales tax. Bank, which is not a "retailer" as such term is defined in 35 ILCS 105/2, understands and believes that the foregoing sale constitutes an occasional sale that is exempt from sales tax. Please provide guidance with respect to the foregoing sale. Thank you in advance for your professional courtesy.

DEPARTMENT'S RESPONSE:

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. Furniture and accessories from a school are considered tangible personal property. Generally, when lending agencies and finance companies sell repossessed items of tangible personal property, the sale is subject to Retailers Occupation Tax. We encourage you to look closely at 86 Ill. Adm. Code

130.1960 to determine whether this rule applies to your client's particular set of facts. Without more information, we cannot determine whether your client is obligated to collect Retailers' Occupation Tax on the sale of the nursery school furniture and accessories. Please note that if the Bank disclosed the owner of the repossessed property and did not take title, the Bank would not be responsible for collecting Retailers' Occupation Tax.

Except as provided in subsection (b) of 86 Ill. Adm. Code 130.1960, lending agencies or finance companies are subject to Retailers' Occupation Tax liability on the sale of repossessed tangible personal property. See subsection (a) of 86 Ill. Adm. Code 130.1960.

Subsection (b) of Section 130.1960 carves out some exceptions in which lending agencies and finance companies are not liable for Retailers' Occupation Tax liability on sales of repossessed items of tangible personal property. Subsection (b) states as follows:

- 1) Finance companies and other lending agencies are engaged primarily in the business of financing or acquiring the promissory notes given by purchasers of automobiles, furniture, refrigerators or other items of tangible personal property.
- 2) To guarantee payment of such notes, they sometimes take as security chattel mortgages upon such tangible personal property. In cases where the purchaser of the automobile or other tangible personal property fails to meet his obligation, the lending agency repossesses the property and sells it to satisfy the obligation evidenced by the notes. In connection with such sales, the lending agency acts as agent for the owner of the repossessed property if such owner is known or disclosed to the purchaser, and if the lending agency does not take title to the property; the lending agency, under such circumstances, is not liable for payment of any Retailers' Occupation Tax with respect to the proceeds from such sales.
- 3) Even if the lending agency does title a repossessed motor vehicle in its name, if the original buyer, after the expiration of the redemption period provided for in the Retail Installment Sales Act [815 ILCS 405], is granted permission to redeem and to resume possession of the vehicle and to continue performance under his original installment contract without any change in the terms of such contract, and the lending agency re-endorses the repossession title to such original buyer, the transaction is not regarded as a sale and so is not taxable.

If 86 Ill Adm. Code 130.1960 is applicable to your client's situation, and the sale of the repossessed items of tangible personal property is subject to Retailers' Occupation Tax liability as described above, the seller incurs Retailers' Occupation Tax liability on the sale and must collect Use Tax from the customer or, in the alternative, the seller must document that the sale was exempt. There are a number of exemptions available in Illinois. Examples of some of the sales that are exempt in Illinois are described in 86 Ill. Adm. Code 130.120.

If persons or businesses purchase tangible personal property in Illinois for resale, and not for use or consumption, the purchasers should provide sellers with Certificates of Resale. Certificates of Resale are valid if they contain the information set out in 86 Ill. Adm. Code 130.1405. If purchasers fail to provide Certificates of Resale, the sales are presumed to not be for resale and sellers would

incur Retailers' Occupation Tax and would be required to charge the corresponding Use Tax to the purchasers. See Section 130.1405(d).

We would also like to refer you to 86 Ill. Adm. Code 130.110 regarding occasional sales. Notwithstanding Section 130.1960, it is possible that the occasional sale exemption could apply to your client's situation. However, such determinations are very fact dependent. Based on the limited information provided in your letter, we cannot determine whether the Bank is making occasional sales. This fact-specific inquiry requires making a determination of whether the Bank holds itself out to the public as a retailer engaged in the business of selling tangible personal property. Indicia of this might include factors such as how often the sales take place and whether the public is aware of such sales.

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,

Cara Bishop
Associate Counsel

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