

This letter discusses the non-taxability of sales in interstate commerce and the temporary storage exemption. See 86 Ill. Adm. Code 130.605 and 86 Ill. Adm. Code 150.310(a)(4). (This is a PLR).

November 13, 2015

Dear Xxxxx:

This letter is in response to your letter dated January 23, 2015 in which you request information and in response to your email dated February 23, 2015, in which you provided additional 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC. for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

ABC formally requests a private letter ruling as it pertains to temporary storage specific to ABC’s business and transactions. This request pertains to Illinois Retailer’s Occupation Tax and Use Tax.

**A. Statement of Facts**

**1. Taxpayer Information**

- a. This request for a Private Letter Ruling (PLR) is being made by the taxpayer INDIVIDUAL, Sr. Tax Manager, for ABC.
- b. This Private Letter Ruling (“PLR”) is not requested with regard to hypothetical or alternative proposed transactions.
- c. This PLR is requested to determine the Retailers’ Occupation Tax and Use Tax consequences of actual business practices of ABC.
- d. ABC is not currently under audit or under any other type of litigation with the IL Department of Revenue on this matter or any other ROT or Use Tax matter.

- e. The IL Department of Revenue has not previously ruled regarding this matter for ABC. In addition, ABC has not submitted any similar request on this same issue previously with the IL Department of Revenue.
- f. ABC requests that their name, address, location of all facilities, employees' names, vendor and Original Equipment Manufacturers (OEM) names, description of facilities and any attached Exhibits be deleted from this PLR prior to making it public information.
- g. ABC is not aware of any authority contrary to the authorities cited below.

## 2. Description of Taxpayer's Business Operations

ABC is an award-winning systems integrator and supply chain solutions provider that brings an innovative and proven approach to how organizations explore, evaluate, architect and implement technology. ABC is a large value added reseller of IT gear, computer equipment and related services to customers throughout the world. ABC's corporate headquarters is located in CITY1 , STATE1 a suburb of CITY2 and also has two warehouses in CITY3, IL. ABC has various other locations throughout United States and international locations. For this PLR, ABC focuses attention on the corporate headquarters and the two warehouses located in CITY3.

All invoices, accounts payable/receivables, accounting, banking, order input and order acceptance is completed at ABC's State1 headquarters. ABC currently charges only the IL Use tax rate for all shipments of product to the State of IL. ABC's two IL warehouses operate the supply chain solutions side of the business. These warehouses hold customer owned inventory and ABC owned inventory. The customer owned inventory is either being held to be resold by the customer or waiting to be deployed for the customer's own use at various locations throughout the United States or to other international destinations. All of the equipment brought into the IL warehouse originates from outside the State of IL from one of ABC's OEMs. A few examples of ABC's OEMs are Company 1, Company 2, Company 3, Company 4 and Company 5..

In one of the [sic] ABC's IL warehouses is a Lab Facility. This lab Facility serves some of the customer owned and ABC owned equipment. In this Lab, various services are performed on the equipment. The three main services are asset tagging, imaging and rack and stack.

**Asset Tagging** is the placement of a serialized number on the various computer equipment per the customer's instructions.

**Imaging** is the placement of different software or operating systems on laptops or servers per the customer's instructions. The software or operating system can be customer owned or sold to the customer by ABC.

**Rack and Stack** is the racking and stacking of various servers and server components into single cabinets. The labeling and organization of all wiring is completed with this service. All of these items are completed per the customer's instructions.

### **3. Material Facts Relating to Transaction**

ABC orders equipment on behalf of their clients. The quantity of equipment ordered can be based upon the customer's instructions or for ABC's larger customers, the quantity ordered is based upon internal forecasts and budgets. As stated above, all of the equipment originates outside the State of IL. If the equipment is not drop shipped to the customer's locations outside of IL it is stored at ABC's IL warehouse awaiting shipping instructions from the customer. All shipments are made via common carrier. The equipment can also be shipped to ABC's IL warehouse to have one of the three aforementioned services completed on the equipment before it is shipped to its final destination outside of IL.

Below are the different scenarios as it relates to title transfer and invoicing of the equipment while in ABC's IL warehouses:

1. ABC's customer orders computer and related IT equipment from ABC and requests ABC to hold and store the equipment in ABC's IL warehouse until it is needed by the customer. All equipment is ordered and shipped in from outside the State of IL. ABC invoices the customer for the equipment and title transfers to the customer at the shipping point of the OEM. It is received at ABC's IL warehouse and invoicing is completed to the customer. Once the customer needs the equipment, shipment, is made by ABC via common carrier outside the State of IL.
2. ABC orders equipment based upon an internal forecast or per the customer's instructions on behalf of the customer and is placed in ABC owned inventory. The customer cannot use the equipment at this time so it is stored at ABC's warehouse. The customer has signed an agreement which states if after 180 days the equipment has not deployed to one of their locations outside of IL, ABC can invoice the customer for the equipment. Title of the equipment will transfer to the customer after the 180 days and upon invoicing. This equipment will remain in ABC's warehouse until further shipping instructions from the customer. Shipments will be made via common carrier outside the State of IL.
3. ABC orders equipment and holds it as inventory until one of their customers has a need for it. Title of this equipment transfers upon invoicing and shipment out of the ABC IL warehouse.
4. Lastly, ABC's customer orders equipment to have one of the 3 services performed on the equipment while in ABC's IL warehouse before it is shipped outside the state of IL. Title of this equipment is transferred to the customer in ABC's IL warehouse and is stored awaiting shipment instructions from the customer.

In scenarios 1 and 2 the customer will sign a bill and hold agreement in which states the customer receives the title to the equipment while in ABC's warehouse. An example of this bill and hold agreement is attached as Exhibit 1. For both Scenario 1 and 2, ABC's customers issue a Temporary Storage statement instructing ABC not to charge the IL Use tax. An example of the Temporary Storage statement is attached as Exhibit 2.

## **B. Ruling Requested**

ABC respectfully requests from the IL Dept. of Revenue if Temporary Storage can apply to scenarios 1 and 2?

For Scenario 2, since the equipment is inside the State of IL upon Title transfer from ABC inventory to customer owned inventory would this scenario still qualify as being brought into the State of IL from outside the State of IL for temporary storage purposes?

Nothing is requested for scenario 3.

For scenario 4, can Temporary Storage apply even though services have been performed on the equipment?

How long can equipment be stored in the ABC IL warehouse before it is no longer considered temporary storage?

## **C. Statement of Law**

**ILLINOIS COMPILED STATUTES (ILCS), CHAPTER 35 REVENUE, USE AND OCCUPATION TAXES, ACT 105 USE TAX ACT**, states,

“To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

**35ILCS105/3-55(a)** The use, in this State, of tangible personal property acquired outside this State by a nonresident individual and brought into this State by the individual for his or her own use while temporarily within this State or while passing through this State.”

Also states in part,

“**35ILCS105/3-55(e)** The temporary storage, in this State, of tangible personal property that is acquired outside this State and that, after being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing, or shaping, and, as altered, is used solely outside this State.

Furthermore, IL Department of Revenue’s response in **Illinois General Information Letter ST 09-0022-GIL, Illinois Department of Revenue, (Jan. 14, 2009)**, states

“A temporary storage exemption from the imposition of use tax is available where tangible personal property is “acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside

this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State.” See 86 Ill. Adm. Code 150.310(a)(4).

As you can see, this exemption only applies to transactions in which the materials are acquired outside this State and after their temporary stay in Illinois are shipped out of Illinois and used solely outside Illinois. When the property is sold in this State or is located in Illinois at the time of sale, the temporary storage exemption does not apply. In that situation, that transaction would be an Illinois retail sale subject to Retailers’ Occupation Tax liability. Temporary storage is not applicable in transactions where there is Retailers’ Occupation Tax liability because the exemption is limited to situations where the only liability that can be involved is Use Tax. See 86 Ill. Adm. Code 150.310(b) which can be found on the Department’s website.

In order to properly document the temporary storage exemption, the purchaser should give certificates to the seller which state that the tangible personal property is acquired outside Illinois and brought into Illinois only temporarily for storage, or for converting, fabricating, manufacturing, printing, processing, or shaping, and is subsequently shipped out of Illinois to be used solely outside the State of Illinois.”

#### **D. Analysis**

**Scenario 1** - In this scenario, the temporary storage exemption would apply. Since no part of the sale took place in IL and ABC is collecting the IL Use tax from the customer and the equipment did originate from outside the State of IL, a properly completed document (See Exhibit 2) containing the temporary storage language was received from the customer and the equipment was subsequently shipped outside the State of IL, the customer can claim a temporary storage exemption in this scenario.

**Scenario 2** - In this scenario, the temporary storage exemption would also apply. Since no part of the sale took place in IL and ABC is collecting the IL Use tax from the customer and the equipment did originate from outside the State of IL, a properly completed document (See Exhibit 2) containing the temporary storage language was received from the customer and the equipment was subsequently shipped outside the state of IL the customer can claim a temporary storage exemption in this scenario. The only detail that is different in this scenario is the equipment is owned by ABC for 180 days in IL before title passes to the customer. The equipment originates from outside the state of IL and is ordered on behalf of the customer.

**Scenario 4** - In this scenario the temporary storage would apply. Since the equipment is being brought into the State of IL from outside the State of IL for further alteration or processing by one of the 3 services of imaging, asset tagging and rack and stacking and a properly completed temporary storage document is received from the customer then the exemption would apply.

**Question** - How long can equipment be stored in the ABC IL warehouse before it is no longer considered temporary storage?

Documentation on the answer to this question cannot be located.

### **E. Signature**

Under penalties of perjury, I declare that I have examined this request, including the accompanying documents, and to the best of my knowledge and belief the facts presented in support of the requested ruling are true, correct and complete.

Please send all questions or requests for additional information to me via email, by phone, or by mail.

In your follow up email dated February 23, 2015, you provided the following answers to the Department's request for additional information:

We received your request for a private letter ruling on behalf of ABC. I have been assigned the preliminary review of your request. I have some questions and need some additional information from you. Please provide answers/information to the following.

1. We would like to see copies of invoices. Does the company have standard invoices or do they differ based on the scenarios described in your letter?

All ABC invoices are standard and they do not look different based upon the various scenarios mentioned in the request. I have attached a copy for your review.

2. Scenario 1 says, "It is received at ABC's IL warehouse and invoicing is completed to the customer." We need further explanation because scenario 1 also states that ABC invoices the customer for the equipment and title transfers to the customer at the shipping point of the OEM. Please clarify what is involved in completing invoicing?

I apologize for the confusion on this one. After clarifying with my business partners at ABC, the scenario should state, The customer is invoiced upon receipt of the equipment into the ABC IL warehouse facility. Title of the equipment is transferred at the destination point (ABC Warehouse). Title is not transferred at the shipping point of the OEM. I have revised this scenario to read: 1. ABC's customer orders computer and related IT equipment from ABC and requests ABC to hold and store the equipment in ABC's IL warehouse until it is needed by the customer. All equipment is ordered and shipped in from outside the State of IL. ABC invoices the customer for the equipment and title transfers to the customer upon receipt of the equipment into the ABC IL warehouse facility. Once the customer needs the equipment, shipment is made by ABC via common carrier outside the State of IL.

3. Scenario 4 does not discuss invoicing. Please elaborate.

ABC instructs the OEM to ship the product to ABC's warehouse. Once the product is received at the IL warehouse, ABC will invoice their customer for these products and services with a ship to location of ABC's IL warehouse. Title to the equipment transfers upon receipt at ABC 's IL warehouse.

4. On page 4, your letter states, "In scenarios 1 and 2 the customer will sign a bill and hold agreement in which states the customer receives the title to the equipment while in ABC's warehouse." However, scenario 1 states that "title transfers to the customer at the shipping point of the OEM." Please clarify when invoicing and title transfer occur in each scenario so that we can gain a clearer picture of these transactions. For example, Customer orders equipment from ABC and requests to hold it at the IL warehouse. Equipment is ordered from and shipped in from out of state. When is the customer invoiced? When does title transfer?

For scenario 1, please see my corrected statements to your question #2. Invoicing and title transfer is completed upon receipt of the equipment from the OEM into ABC's IL warehouse.

For scenario 2, title to the equipment transfers after the 180 days inside the ABC IL warehouse. At this 180 day mark invoicing is also completed.

For scenario 3, title to the equipment transfers at the customers destination which is the ship to location on the invoice. Invoicing takes place once the product is shipped.

For scenario 4, invoicing and title transfer is completed upon receipt of the equipment from the OEM into ABC's IL warehouse.

5. On page 6, scenarios 1 and 2 state that "ABC is collecting the IL Use tax from the customer." Do you mean that ABC is collecting IL Use tax from the customer in the event that an appropriate temporary storage certificate is not presented? Please explain this statement.

Yes. The intent of this statement was meant to clarify ABC collects "USE Tax" and not Sales Tax with the understanding that temporary storage only qualifies for transactions which are subject to the "Use Tax". A better way of stating this is as follows: "Since no part of the sale took place in IL and ABC sales are subject to the IL USE tax and the equipment did originate from outside the State of IL . . ."

#### **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. See 35 ILCS 120/2; 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

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.

Generally, Use Tax is imposed on tangible personal property that is acquired outside this State and brought into this State for use or consumption. A temporary storage exemption from the imposition of Use Tax is available where tangible personal property is "acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State." See 86 Ill. Adm. Code 150.310(a)(4).

The temporary storage exemption only applies to situations where Use Tax liability may be incurred. See 86 Ill. Adm. Code 150.310(b). It only applies when the property is acquired outside this State and after a temporary stay in Illinois, is shipped out of Illinois, and used solely outside Illinois. When the property is sold in this State the temporary storage exemption does not apply, whether or not the property subsequently leaves the State. In this situation, an Illinois retail sale has occurred, subject to Retailers' Occupation Tax liability. Temporary storage is not applicable in transactions where there is Retailers' Occupation Tax liability.

Based upon the representations in your letter and subsequent email, it is our understanding that in Scenario 1, the property is acquired outside of Illinois, and the customer requests that ABC hold the product temporarily in its Illinois warehouse. It is our understanding that the customer is invoiced and title transfers after the equipment arrives in the Illinois warehouse. Your letter states that when the customer requests the equipment, ABC arranges shipment of the equipment to the customer outside of Illinois via common carrier. Based on our understanding of Scenario 1 as described in your letter and subsequent email, it is our opinion that the temporary storage exemption applies to Scenario 1.

Based upon the representations in your letter and subsequent email, it is our understanding that in Scenario 2, ABC orders the equipment based on internal forecast or per customer instructions, and places the equipment in ABC's inventory when the equipment arrives in ABC's Illinois warehouse. It is also our understanding that pursuant to an agreement between ABC and the customer, ABC will invoice the customer and title will transfer to the customer if the customer has not requested shipment of the equipment within 180 days. The equipment will remain in the Illinois warehouse until ABC receives further instructions from the customer to ship the equipment via common carrier outside of Illinois. Based on our understanding of Scenario 2 as described in your letter and subsequent email, it is our opinion that the temporary storage exemption does not apply to Scenario 2. Where tangible personal property is located in this State at the time of its sale (or is subsequently produced in Illinois), and then delivered in Illinois to the purchaser, the seller is taxable if the sale is at retail. 86 Ill. Adm. Code 130.605(a). However, the tax does not extend to gross receipts from sales in which the seller is obligated, under the terms of his or her agreement with the purchaser, to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to a point within this State, provided that the delivery is actually made. See

86 Ill. Adm. Code 130.605(c). The sale described in Scenario 2 is an exempt sale into interstate commerce.

Based upon the representations in your letter and subsequent email, it is our understanding that in Scenario 4 the equipment is acquired outside of Illinois and is shipped to ABC's Illinois warehouse where it is temporarily stored while ABC performs one of three services on the equipment. Your letter states that the product is stored in the Illinois warehouse until the customer provides ABC with shipping instructions. It is our understanding that ABC subsequently ships the product to the customer outside of Illinois. Based on our understanding of Scenario 4 as described in your letter and subsequent email, it is our opinion that the temporary storage exemption applies to Scenario 4.

This response is limited to Scenarios 1, 2, and 4 as your letter does not request a ruling regarding Scenario 3.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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,

Richard S. Wolters  
Chairman, Private Letter Ruling Committee

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