

This letter responds to an annual survey. See 86 Ill. Adm. Code Parts 130, 140, 150 and 271.
(This is a GIL.)

September 2, 2008

Dear Xxxxx:

This letter is in response to your email survey dated May 28, 2008, 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:

ABC, in conjunction with XYZ, annually undertakes a major information collection effort with respect to the application of the tax laws of the states. ABC's goal in gathering this information is to assemble and publish the Guide. As the market has shown, such a publication is a useful reference source for departments of revenue, attorneys, corporate tax departments, and public accounting firms.

ABC is in the process of updating the Guide for its 2009 annual edition. Accordingly, we ask for your state's assistance in preparing this important publication. I have attached two Microsoft Word files--one for income tax and one for sales tax--with this year's questionnaire. This year we have updated the format for the income tax questionnaire and if we receive positive feedback from you on the changes, we will also change the format for the sales tax portion of the questionnaire.

Although the income tax questionnaire has a new look, you should be able to easily track your prior year responses to this year's questionnaire. (If you do not have a copy of your 2007 response, and it would be helpful to you in completing the 2008 questionnaire, please let me know and I will email you a copy.)

This year, the numbering scheme and the sequence of the questions remains essentially the same, however, we have tried to adopt a more user-friendly format for the income tax portion of the questionnaire. Also, please note that the new questions

are highlighted in boldface and larger print. Therefore, you should be able to easily follow the changes from last year to this year. Because of anticipated time constraints for respondents, again this year we are asking that you only respond to the questions for which your answers require a change and the new questions. All unanswered questions will be considered the same as last year's answer unless otherwise noted.

Please complete the 2008 questionnaire and return it by July 15, 2008, via email. The enclosed questionnaire should be answered in accordance with laws in effect as of July 1, 2008. If there is legislation pending or recently enacted that would alter your answers, please explain any such changes that you are aware of at the time the questionnaire is completed.

Beginning in the fall 2000, ABC began a tuition assistance program for state department of revenue employees in appreciation for their assistance in publishing the Guide. A limited amount of tuition assistance is available for courses in ABC's Online Graduate Certificate. This Certificate program is the first of its kind in the nation to be offered totally online. To receive the Certificate, students must complete the four-course curriculum. For further information about the program or available tuition assistance contact PERSON.

If you have any questions about the questionnaire or individual questions, please contact me. Thank you for your continued cooperation and support. Your contributions are extremely valuable in maintaining the quality of this outstanding reference work. A complimentary copy of the Guide will be sent to you when it is published next year.

In your questionnaire, you have stated and made inquiry, in part, as follows:

SALES AND USE TAXES

B. Sales and Use Tax Base

38. Temporary Storage Exemption

Does your state provide a temporary storage exemption for materials purchased outside your state and temporarily stored in your state prior to transport/use outside your state?

Yes _____ No _____

If yes, are there specific items that qualify for exemption?

Yes _____ No _____

If yes, which of the following items qualify?

Printed advertising materials _____

Marketing and promotional items _____

Computer or other office equipment
that must be set-up or staged prior to
use _____

Tangible personal property that a
contractor may install in real estate _____

Other (please list below)

If yes, do any of the following restrictions apply? (check all that apply)

Must be purchased for use outside the state

Must be stored in state temporarily

Must be used in manufacturing

Must not be used in manufacturing

Other (please specify)

If, in order to be exempt, tangible personal property must be stored “temporarily” in the state, how does your state define temporarily?

Less than 3 months

Less than 6 months

Less than 1 year

No period specified—determination based upon facts and circumstances

Other period applies, e.g., 30 days, 60 days, etc. (please specify)

44. Local Jurisdiction Nexus

If your state imposes local taxes, must a taxpayer have a physical presence in each local jurisdiction to be required to collect its tax, or does physical presence in one jurisdiction require collection in all jurisdictions?

Must have a physical presence in each local jurisdiction to be required to collect the tax

Physical presence in one jurisdiction necessitates tax collection in all local jurisdictions in state

45. Exemption for Energy Conservation Equipment and Other Items

Does your state provide a sales and use tax exemption for any of the following items? (check all that apply)

Energy Star-rated appliances

Energy Star-rated florescent light bulbs

Solar electricity generating equipment

Wind mills

Electric/hybrid vehicles

_____ **Any device, equipment or machinery operated by hydrogen or fuel cells**

_____ **Other (please specify)**

46. Web site Design and Hosting

Are charges for Web site design or creation subject to sales tax in your state?

Yes _____ No _____

Are charges for Web site hosting services subject to sales tax in your state?

Yes _____ No _____

Are advertising revenues for Web site advertising subject to sales tax in your state?

Yes _____ No _____

Are referral fees for Web site links paid to the Web site owner subject to sales tax in your state?

Yes _____ No _____

Are sponsorship fees paid to Web sites for prominence on a site subject to your state's sales tax?

Yes _____ No _____

DEPARTMENT'S RESPONSE:

The Department does not approve nor endorse private tax publications. We are providing responses to the questions highlighted in bold in your email to the Department. We are unable to answer in the requested "yes" or "no" format; and, accordingly, we are providing references to the applicable statutes and regulations.

38. Temporary Storage Exemption.

There are several temporary storage exemptions in Illinois. Authority for the temporary storage exemptions are found in the Use Tax Act at 35 ILSC 105/3-55, subsections (e), (f), and (j). The administrative rules governing temporary storage are found in 86 Ill. Adm. Code 150.310, "Exemptions to Avoid Multi-State Taxation."

44. Local Jurisdiction Nexus

Generally, retailers registered with the Department to collect Retailers' Occupation Tax and Use Tax are obligated to collect and remit to the Department taxes imposed by units of local government and administered by the Department. Generally, the regulations for the taxes imposed by local governments and administered by the Department can be found at 86 Ill. Code Parts 205 through 396. See also 86 Ill. Adm. Code 271.115, Jurisdictional Questions.

45. Exemption for energy Conservation Equipment and Other Items

The State of Illinois does not provide sales and use tax exemptions for any of the items identified in your letter at paragraph 45.

46. Web Site Design and Hosting.

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

New Legislation.

The 95th General Assembly has enacted a number of laws relating to sales and use taxes in Illinois. P.A. 95-0304 created a new "fly-away" exemption for aircraft. 35 ILCS 120/2-5(25-7). P.A. 95-0538 created a new exemption for tangible personal property used in the construction and maintenance of a community water supply. 35 ILCS 120/2-5(39). P.A. 95-0672 created a new exemption for tangible personal property sold to or used by a public-facilities corporation for the purpose of constructing or furnishing a municipal convention hall. 65 ILCS 5/11-65-10. P.A. 95-707 expanded the manufacturing and assembling machinery and equipment exemption to include a new, limited time exemption for production related tangible personal property. 35 ILCS 120/2-45; 86 Ill. Adm. Code 130.330. P.A. 95-0264 created new reporting and payment requirements in the Motor Fuel Tax Law for persons who produce biodiesel fuel or biomass blends for self-use. 35 ILCS 505/2d.

The Department has also proposed a number of regulatory changes relating to sales and use taxes. The language of the regulatory changes and the status of each the proposals may be found on the Departments' website.

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,

Richard S. Wolters
Associate Counsel

RSW:mks