ST 02-0145-GIL 06/28/2002 SALE FOR RESALE

A Certificate of Resale must contain the items of information set out in 86 Ill. Adm. Code 130.1405. (This is a GIL).

June 28, 2002

Dear Xxxxx:

This letter is in response to your letter that we received on April 2, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at http://www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

We are writing to you today to request a written ruling concerning the charging of sales tax on tree seedlings we sell as well as plant as part of government reimbursement programs: CRP and CREP. We are a retail and wholesale business with several different departments. During our recent audit, several questions arose regarding sales tax as related to seedling sales and seedling planting contracts.

We had previously received a written ruling, May 4, 1989, (#89-0319), from Staff Attorney Karl W. Betz which stated that we were to charge sales tax on the retail sales of seedlings. Please see enclosed copy.* We would like to give you some more information and have you take another look at the retail sales and planting contracts and provide us with an updated ruling.

The seedlings we are selling to customers are being purchased by them as part of programs that the government will reimburse them for: CRP and CREP. Hardwood seedlings are planted for potential harvest. In most cases, the customers are purchasing these seedlings based on a forestry plan written for them by the Department of Natural Resources (DNR). The intent or goal of hardwood seedlings is harvest …. developing a continued lumber supply. Additional seedlings (shurbs) are planted primarily for habitat development and soil erosion. Please see the copy of the DNR plan attached along with our invoice.

Approximately half of our seedlings are retailed to customers for planting by the land owner or a 3rd party contractor. The balance is contract planted by our crews.

Could retail sales and plantings of hardwood seedlings intended for harvest be considered sales for resale? How should we document each sale if no tax is to be charged? If we are to prepare a form for their signature, what should be included on the form?

We are right now in the process of bidding these sales and planting contracts. We would appreciate your prompt consideration to these questions so that we may proceed with consistency for each customer.

Organizations that qualify as exclusively religious, charitable, or educational can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers (an "E" number). These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. See 86 Ill. Adm. Code 130.2007. Sales to governmental bodies are subject to tax unless the governmental body has obtained an active exemption identification number ("E" number) from the Department. See 86 Ill. Adm. Code 130.2080, enclosed.

Companies selling tangible personal property to organizations that qualify as exclusively religious, charitable, or educational or to governmental bodies must be provided with an "E" number for sales to such organizations or governmental bodies to be tax exempt, unless another exemption can be documented.

It is important to note that only sales of tangible personal property invoiced to the organization or governmental body itself are exempt. As a general proposition, individual members, clients or other associates of exempt organizations or governmental bodies who purchase items of tangible personal property, such as plants or seedlings, with their own funds and are then reimbursed by the exempt organization, cannot purchase the items tax-free. This would include seedlings purchased by landowners who are then partially reimbursed by a government payment through the CRP or other cost-share program. As noted above, the sale must be made to the exempt organization or governmental body in order for the exemption to apply.

You ask if sales of hardwood seedlings intended for harvest can be sales for resale. A retailer that sells tangible personal property to a purchaser who may use or consume such property within the meaning of the Retailers' Occupation Tax Act, but who also may resell such property, must determine, at the time when he sells the property to such purchaser, whether the purchaser is buying the property "for use or consumption" or whether the purchaser is buying the property "for resale". The sale for resale exemption can be claimed by a purchaser who purchases an item with the intent of reselling such item and furnishes its vendor with a Certificate of Resale that contains the information required by 86 Ill. Adm. Code 130.1405, enclosed. Please understand that the resale exemption is only available if the purchaser can forthrightly certify that he is going to resell the seedlings.

Your letter mentions there might be a "potential harvest" and the copy of the District Forester's Forest Stewardship Plan for landowner AAA that was appended to your letter recommends an eventual timber harvest in the year 2015. Please be advised that a potential recommended harvest is not sufficient to claim and document the resale exemption. To claim this exemption, the purchaser must submit a properly completed Certificate of Resale. A purchaser should not be cavalier in making such a certification.

The invoice appended to your letter shows a charge for your planting the trees for your customer. The Department has amended regulation 86 Ill. Adm. Code 130.1965 since our May 1989 letter to you. A current copy is enclosed. Please note that a transaction where the seller transplants items into the land of the customer is not subject to Retailers' Occupation Tax. Rather, the seller

functions as a construction contractor and incurs a Use Tax liability on its cost price of the items affixed to the purchaser's real estate. See Section 130.1965(c).

I hope this information is helpful. The Department maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.