
COMPLIANCE ALERT



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tax.illinois.gov
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Compliance Problem

A Department of Revenue investigation has revealed that some taxpayers are incorrectly treating sales of appliances and other tangible personal property as construction contracts and failing to remit Retailers' Occupation Tax (ROT). This compliance alert documents the conclusions of the Department's investigation and is intended to assist taxpayers in determining whether they are acting as construction contractors or retailers and clarifies the tax liabilities of each type of transaction.

Background

Most retailers will not act as a construction contractor. If a customer that is the end user of the tangible personal property comes in and makes a retail purchase and enters into a separate agreement for installation, the sale is an over-the-counter transaction subject to ROT. Installation would only be taxable if it was included in the selling price of the product.

A person can act as either a retailer or a construction contractor, depending on the nature of his arrangement with a customer. Construction contractors are persons who enter into contracts to furnish (they purchase the product they are furnishing) and permanently affix tangible personal property to real estate. They are the end users of tangible personal property that is affixed to real estate and incur Use Tax on their cost price of such property. They cannot charge tax to customers, nor can they make purchases for resale. 86 Ill. Adm. Code 130.1940(c) explains these transactions in greater detail.

In contrast, a person acts as a retailer when selling tangible personal property over-the-counter to the end consumer regardless of a separate contract to install the tangible personal property; he incurs ROT on his gross receipts regardless of the tangible personal property being attached to real estate or not. 86 Ill. Adm. Code 130.1940(b) explains these transactions in greater detail. Installation charges, if agreed to separately from the selling price of an item, constitute a separately contracted service, which may be excluded from tax. Regulations at 86 Ill. Adm. Code 130.450 explain the taxation of installation charges.

Sometimes, a person may act as both a retailer and a construction contractor. In these situations, it is often impractical for a person, at the time of purchase, to know how he will dispose of an item. Such persons may certify to suppliers that they are purchasing all items for resale. Upon disposition of these items, such persons will incur ROT, including local taxes. Tax is based either on the cost price of items incorporated into real estate as part of a construction contract or on the selling price of items sold over-the-counter.



Solution

The first thing a seller must do is determine if they are making an over-the-counter retail sale to the end consumer with separately contracted installation services. In these instances, the seller must pay ROT regardless of whether or not the tangible personal property is affixed to real estate. The Department does not consider stoves, refrigerators, washing machines and clothes dryers to be permanently affixed (unless built in). A sale of these items does not become a construction contract simply because the seller and purchaser agree that the seller will install the item by plugging the item into an electrical outlet or connecting the item to the gas or water supply.

If an item is permanently affixed to real estate, the seller must determine if it is affixed pursuant to a construction contract. The contractor would need to be the purchaser of the tangible personal property. If it is sold in this manner and is affixed to real estate, the construction contractor incurs Use Tax based on his cost price of the item. To demonstrate that seller and purchaser entered into a construction contract, the seller must maintain documentation that demonstrates that the purchaser contracted with the seller to furnish and permanently affix the item to real estate. For example, if a contractor enters into an agreement with a person to remodel a kitchen and furnish and install cabinets and a dishwasher as part of the construction contract, the contractor pays Use Tax to his supplier, even if the contract breaks out the charges for the cabinets, dishwasher and installation.

The sale of tangible personal property with a separate agreement to install it does not convert the retail sale to a construction contract. This frequently occurs when an appliance is sold, the purchaser requires installation of the appliance, and the invoice lists the charge for installation separately. For example, a person may purchase a dishwasher at an appliance store and the seller and purchaser enter into a separate agreement for the installation of the dishwasher. The seller in this case would pay ROT on the receipts from the sale of the dishwasher. If the purchaser buys an appliance and requests a list of persons that can install the item and the purchaser contracts with the person separately for the installation, the seller must pay ROT on receipts received from the sale of the dishwasher.

Voluntary Compliance Initiative

To help retailers to comply with the law, the Department offers the following guidance:

- ① Conduct a self-audit of the issue for reporting periods July 2012 through the current period (*i.e.*, June 2015) for monthly filers and quarterly filers and calendar years 2012, 2013, and 2014 for annual filers. The Department retains the right to verify the accuracy of the retailer's self-audit determination at any time prior to the expiration of the statute of limitations for the liability period.
- ② For any periods within this time frame for which you have an increased tax liability, you must file Form ST-1-X to report and pay the increased tax (net of use tax previously paid). File your amended forms prior to **September 15, 2015**, to receive abatement of applicable late-payment penalties. We will bill you for any interest that may be due. You may be able to complete your Form ST-1-X electronically using MyTax Illinois. If you file Form ST-1-X electronically, you must call 217 524-4772 or email June2015Alert@illinois.gov to inform us that you have submitted an amended return in response to this compliance alert and are requesting penalty abatement. Paper forms are available on our website at tax.illinois.gov. If you are filing by paper, mail your completed form to the address below to ensure timely processing.

SALES TAX PROCESSING DIVISION
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- ③ If you have nexus in Illinois but have not registered with the Department and have not filed any Sales and Use Tax returns, you may qualify for voluntary disclosure. You must complete Form BOA-2, Application for Voluntary Disclosure, to seek a review by the Department. If you need additional assistance, visit our website at tax.illinois.gov or call weekdays between 8 a.m. and 5 p.m. at 217 524-4772.