

Under the Service Occupation Tax, servicemen are taxed on tangible personal property transferred incident to a sale of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

April 27, 2009

Dear Xxxxx:

This letter is in response to your letter dated November 12, 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:

Please accept this letter, on behalf of our client, as an official request for ruling regarding the state sales & use taxability of the products and services they sell. COMPANY is in the business of providing lost pet recovery products and services. COMPANY sells microchips and associated scanners to Veterinary Practices, Animal Shelters, Breeders, and Pet Stores. These microchips, containing unique identifying numbers, are implanted under a pet's skin. In the event that a pet that has been implanted is lost, the pet can be scanned so that the information associated with the microchip can be used to reunite the pet with its owner. In addition to the sale of the microchips and scanners COMPANY provides the following services:

'Limited' Pet Recovery Services: COMPANY provides an internet accessible data repository in which owner and pet information is held for the purpose of reuniting lost pets with their rightful owners. Pet owners who have their pets 'chipped' are asked to fill out a COMPANY enrollment form, or have their vet complete an enrollment form for them. Information on the enrollment form critical to the recovery of the pet is captured and uploaded to the COMPANY database. COMPANY provides a pet recovery call center which receives calls from both individuals and institutions and uses information in the COMPANY database to orchestrate the reuniting of the lost pet with its owner.

'Full' Proactive Pet Recovery Services: COMPANY offers a premium pet recovery service to pet owners who have had their pets chipped. Full Proactive Pet Recovery

Services include all services available under the 'Limited' plan plus the following additional services:

- Lost Pet Alerts: Subscribers have the ability to log into the COMPANY website to allow them to generate lost pet notices which are either faxed or emailed to veterinarians, shelters, and pet rescuers in the surrounding area in which the subscribers pet was lost. Subscribers also have the ability to create 'Lost Pet' posters that can be printed and posted in the area via this service.
- 24/7 Emergency Medical Response through the ASPCA Animal Poison Control Center hotline.
- Complimentary Lost Pet Medical insurance which provides for up to \$3,000 of emergency medical treatment for injuries a subscriber's pet may suffer while lost.
- Provision of laminated, wallet-sized Pet ID Cards with the pet's name, microchip number, photo, vet information and emergency clinic contact information.

Furthermore, in addition to the microchips and scanners and the services described above, COMPANY sells Pet Identification Collar Tags. These collar tags are used in conjunction with the Limited and Full Pet Recovery Services. The tags are individualized with the pet's microchip ID and the 1-800 COMPANY call center number.

COMPANY's sales practices are as follows:

- Chip Only Sales: Microchips (packaged with single use syringes) are sold to veterinary clinics, shelters, and breeders.
- Vet Reseller Model: A variety of incentive programs are marketed to veterinary clinics which allow them to obtain chips for free. In a typical transaction, a microchip is provided for free to the clinic for each Full Proactive Service enrollment that COMPANY receives from the participating clinic. Clinics will charge an all inclusive fee to the consumers for the chip, the implant procedure and the first year of pet recovery services. Clinics can also earn a free chip for enrolling a pet in COMPANY that they did not implant(i.e. a competitively chipped pet).
- Prepaid Program: Both Vets and Shelters are offered an optional 'Prepaid' plan wherein the microchip and first year of Full Proactive Pet Recovery Services are offered for sale from COMPANY. Shelters typically pass this charge along to customers as part of the overall set of pet adoption fees.
- COMPANY Pet Recovery Services: Pet Recovery Services are offered directly to consumers for both COMPANY and competitively chipped pets. Limited pet recovery services are offered at a single fee for the life of the pet. Full Proactive Pet Recovery Services are offered for an annual renewable fee. Consumers are provided with an online consumer portal for registering for either Limited of [sic] Full service.

In light of the above, we request a written response as to the sales & use taxability of the following products and services we sell:

- 1) Microchips;
- 2) Scanners;
- 3) Collar Tags;
- 4) Fee for Limited Pet Recovery Services only;
- 5) Fee for Full Proactive Pet Recovery Services only;
- 6) Microchips given away for free;
- 7) Lump Sum fee for Pet Recovery Service and Microchip;
- 8) Lump Sum fee for Microchip, Implantation, and Pet Recovery Service;

To aid in your analysis we suggest a review of our website at www.COMPANY.com. If you have any questions or should require any additional information please do not hesitate to contact me.

DEPARTMENT'S RESPONSE:

We are unable to provide you with specific responses as to the sales and use taxability of the products and services you sell without a review of all contractual arrangements between your client and its various types of customers. However, we hope the following general information will be helpful.

RETAILERS' OCCUPATION TAX AND USE TAX

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. 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. 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. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

SALE FOR RESALE

When an Illinois retailer sells tangible personal property and delivers it in Illinois, sales tax is due unless an exemption can be documented. The resale exemption is applicable when making sales to a purchaser who will in turn sell the tangible personal property. For general information regarding resale certificates, the Department's regulation for resale certificates, "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale," is found at 86 Ill. Adm. Code 130.1405. If an electronic resale certificate is kept, it should contain all of the information required under 86 Ill. Adm. Code 130.1405.

A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. In addition to the statement, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certification of Resale to out-of-State Purchaser.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (*i.e.*, it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided the above stated conditions are met. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois. The risk run by companies in accepting such a certification and the risk run by purchasers in providing such a certification is that an Illinois auditor is more likely to go behind a certificate of resale that does not contain a signature and require that more information be provided as evidence that the particular sale was, in fact, a sale for resale.

SERVICE OCCUPATION TAX

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.

Under the Service Occupation Tax Act, businesses providing services (*i.e.* servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The serviceman's liability may be calculated in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the serviceman's entire bill; (3) Service Occupation Tax on the serviceman's cost price if the serviceman is a registered de minimis serviceman; or (4) Use Tax on the serviceman's cost price if the

serviceman is a de minimis and is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately-stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

DONOR/DONEE

When property is purchased and then given away, the donor has made a taxable use of the property by making such gift. Therefore, it is the donor of the gift who is deemed the end user of the property and who is subject to the Use Tax, rather than the donee. See 86 Ill. Adm. Code Section 150.305(c).

Use Tax liability is calculated on the cost price of the property used in this State or given away in this State. When the property is purchased at retail, the base for calculating Use Tax is the purchase price of the property. If, however, the property is a product produced by that person, the donor's Use Tax liability is calculated on that person's cost price of the materials and products purchased and incorporated into the finished product. See 86 Ill. Adm. Code Section 150.305(b).

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,

Debra M. Boggess
Associate Counsel

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