

This letter concerns the tax liabilities involving the purchase of a homebuilt aircraft kit. See 86 Ill. Adm. Code 152.101. (This is a GIL).

March 5, 2009

Dear Xxxxx:

This letter is in response to your letter dated April 1, 2008, in which you requested a private letter ruling. 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:

I am requesting a private letter ruling in regard to the Use Tax and other taxes on the purchase of aircraft components, parts, etc...from an in-state individual to build a complete aircraft. My understanding from the department of Aeronautics and from the State Department of Revenue is that no tax is due. I am requesting this ruling to preclude any complications at a later date when I pursue registration of the aircraft.

Attached are my responses to the items required by Section 1200.110(b) for this request. Please feel free to contact me with any questions or if additional information is needed in regard to this ruling.

Request for Private Letter Ruling

Items required by Section 1200.110(a)

(1) Requestor:

I am making this request on behalf of myself.

(2) Separation of requests

This is a single request for clarification on Use / Sales Tax.

(3) Alternative plans of proposed transactions

This is not a request for alternative plans or a hypothetical situation to avoid tax.

(4) Discretion of ruling

It is understood that it is at the departments [sic] discretion as to whether or not to rule on this request.

Items required by Section 1200.110(b)

(1) Complete Statement of Facts and other information:

I am the requestor of the Private Letter Ruling:

I am in the process of purchasing pieces and components required to build homebuilt aircraft. The components that I am pursuing have never been registered with the FAA. At the present time, is not deemed to be an aircraft, nor has it ever been in an airworthy condition. The components consist of fiberglass and epoxy resin components, both molded and still in raw form, metal hardware and components, propeller parts and components, instruments, engine parts (incomplete) and other components associated with the airframe.

The seller is a resident of the State of Illinois and is not in the business of selling aircraft. He completed a portion of the work involved in completing the homebuilt, but a majority of the work remains. I intend on completing the majority of the work as required by the FAA to hold the repairmans [sic] certificate as well as obtain an amateur built aircraft certificate – special airworthiness certificate in the experimental category.

There is no business reason for the transaction – the pursuit of completing the homebuilt is for personal education, satisfaction, and knowledge. I intend on eventually registering the aircraft in the state of Illinois and paying the appropriate state registration, fuel taxes, etc...at that time. This Request for Private Letter Ruling is in regard to Use Tax. I want to be certain that I am not taxed at registration for the market value of the aircraft constructed primarily of my own labor and of items acquired in-state. I understand that I must pay use tax for aircraft components ordered from out of the State of Illinois.

I have contacted the State department of Revenue and was verbally informed that this transaction is a General Merchandise Transaction. This is because the aircraft is not registered or recorded with the FAA, as it is not yet an aircraft. Neither party (buyer or seller) is in the business of buying or selling aircraft or aircraft components. Based on this information, I was told to document the transaction carefully and provide that information when I register the aircraft with the State of Illinois. I am seeking an official ruling to ensure that there is no confusion, concerns or issues when it comes time to register the aircraft with the state.

(2) Contracts, licenses, agreements, instruments, or other documents:

There will be / are no agreements, licenses, instruments or other documents relating to this transaction beyond a bill of sale.

(3) Tax period at Issue:

2007 – 2008 – discussions of the sale began in 2007 – I anticipate the transaction to be complete by the end of the year 2008.

(4) Statement of Previous Ruling:

To the best of my knowledge, the Department has not previously ruled on the same or a similar issue for me, nor have I previously submitted the same or similar issue to the Department.

(5) Statement of authorities supporting the taxpayer's views:

The documentation I can find with regard to this sale is marginally clear. According to a state definition of Use Tax:

ST-44

A use tax is a tax upon the privilege of using tangible personal property in Illinois. It is designed to distribute the tax burden fairly among Illinois consumers and **to assure fair competition between Illinois businesses and out-of-state businesses**. Illinois law requires you to pay tax at the Illinois rate when you **buy an item from another state or country to use in Illinois**. (Emphasis added)

The next place to look was RUT-75 which is specific to Aircraft and watercraft. Based on the information on RUT-75, I must determine whether I have an aircraft or not.

RUT-75

Who must file this return?

You must complete and file this return if you acquire an aircraft or watercraft by gift, donation, transfer, or non-retail purchase.

- The term '**Aircraft**' includes airplanes, helicopters, hot air balloons, ultra lights, gliders, blimps, dirigibles, seaplanes, and anything else defined as aircraft in Section 3 of the Illinois Aeronautics Act.

(620 ILCS 5/3) (from Ch. 15 1/2, par. 22.3)

Sec. 3. 'Aircraft' means any device used or designed to carry humans in flight as specified by the Department by rule. All devices required to be licensed as 'aircraft' by the Federal Aviation Administration (FAA) on the effective date of this amendatory Act of 1995 are 'aircraft'. The Department may, by rule, specify the extent to which aircraft not required to be licensed by the FAA are subject to the provisions of this Act. (Source: P.A. 89-345, eff. 1-1-96.)

620ILCS5/3 clearly states that an aircraft is a device required to be licensed by the FAA. The components that I purchased are not an aircraft. They are not licensed by the FAA at the time of purchase to carry humans in flights as specified by the department.

(6) Statement of authorities contrary to the taxpayer's views:

I have no knowledge of authorities contrary to my opinion and my interpretation of the above items.

(7) Trade Secrets

There are no known trade secrets involved in this Request for Private Letter Ruling

(8) Signature:

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4).

The Private Letter Ruling Committee has decided that it will not issue a Private Letter Ruling in regards to your request. The Committee believes that the following general information will provide you with sufficient guidance regarding your request.

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. 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.

A person does not incur Retailers' Occupation Tax liability on the gross receipts from an isolated or occasional sale. See 86 Ill. Adm. Code 130.110 regarding "Occasional Sales." Consequently, the purchaser of that tangible personal property does not incur a corresponding Use Tax liability on that purchase. See 86 Ill. Adm. Code 150.101(d). As a general proposition, the occasional sale exemption is only available when a person (as defined in Section 1 of the Retailers' Occupation Tax Act, 35 ILCS 120/1) purchases an item and then, after using the item, disposes of it by selling it. See 86 Ill. Adm. Code 130.110. However, the sale will not qualify as an isolated or occasional sale if the person holds himself out as being engaged in the retail sale of that item or similar type of tangible personal property.

Even though a purchaser may not incur a Use Tax liability on a purchase of tangible personal property in an occasional sale transaction, the purchaser of specific types of tangible personal property may still incur a tax liability in this State under the Aircraft Use Tax Law (35 ILCS 157/10-1 et. seq.), Watercraft Use Tax Law (35 ILCS 158/15-1 et. seq.), or Vehicle Use Tax (625 ILCS 3/3-1001 et. seq.).

Under the Aircraft Use Tax Law, a tax is imposed on the privilege of using, in this State, any aircraft as defined in Section 3 of the Illinois Aeronautics Act acquired by gift, transfer, or purchase after June 30, 2003. This tax does not apply if the use of the aircraft is otherwise taxed under the Use Tax Act. 35 ILCS 157/10-15. The tax is imposed on the use of aircraft in this State regardless of whether the aircraft is actually registered under the Illinois Aeronautics Act. See 86 Ill. Adm. Code 152.101(a).

It is the Department's position that whether the acquisition of an aircraft kit in a non-retail transaction is considered the acquisition of an aircraft for purposes of the Aircraft Use Tax Law depends on whether a certificate of airworthiness has been issued by the Federal Aviation Administration. If a certificate of airworthiness has not been issued for the aircraft kit (regardless of the state of completion of the aircraft), the acquisition of the aircraft kit is not subject to the provisions of the Aircraft Use Tax Law. If an airworthiness certificate has been issued for that aircraft and the aircraft is acquired from a non-retailer, the acquisition of the aircraft is subject to the provisions of the Aircraft Use Tax Law. Once an airworthiness certificate has been issued by the FAA for an aircraft,

that “aircraft” remains an aircraft for purposes of the Aircraft Use Tax Law regardless of whether or not it is airworthy at the time of acquisition.

Please note that the purchaser of an aircraft kit or an aircraft in a non-retail transaction will generally incur Use Tax on any tangible personal property that is purchased from a retailer to complete the kit or repair or maintain the aircraft. In regards to items purchased from in-State retailers, the purchaser should pay the Use Tax to those retailers at the time of the purchase. For items bought outside of Illinois from a retailer and brought into the State and on which Use Tax has not been collected by the retailer, the purchaser is required to file a return and pay Use Tax directly to the Department. Please see the Department’s regulation on payment of Use Tax. 86 Ill. Adm. Code 150.701.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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TDC:msk