

Under the Service Occupation Tax, servicemen are taxed on tangible personal property transferred as an incident of the sale of service. Servicemen do not incur Service Occupation Tax liability on property that they resell as an incident to a sale of service under an agreement by which the servicemen are obligated to make physical delivery of the goods from a point in Illinois to a point outside Illinois, not to be returned to a point within Illinois, provided that such delivery is actually made. See, 86 Ill. Adm. Code 140.501. (This is a GIL.)

April 26, 2010

Dear Xxxxx:

This letter is in response to your letter dated March 4, 2010, 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:

I have been trying to determine where tax (sales, use & SOT) is due & not due relative to my business. We are an architectural design firm specializing in exhibits for trade shows & special events, and mobile marketing programs (where tractor-trailers are designed & built-out to promote our client's products & services and increase our client's brand awareness at trade shows & special events, such as sporting events, through-out the country). For the record, if we have a client or event in Illinois, we pay tax on materials involved in the production of these jobs. When we have out-of-state clients with out-of-state events, our understanding is that this is interstate commerce, & therefore, not subject to Illinois tax of any kind.

The question comes in, when we have these properties come back to Illinois to be repaired, reconditioned or remodeled. These properties are not being used in Illinois, & after we do the above mentioned work, we again, ship them out-of-state, where they are delivered to the client & then used. Please see related questions in the email below & respond.

Thanks [sic] you for your prompt attention to this matter.

The following is the email correspondence from the IDOR online & Todd Bundy's suggestion to contact you by mail:

Recently you requested personal assistance from our on-line support center. Below is a summary of your request and our response.

Thank you for allowing us to be of service to you.

Subject

Sales & use tax & SOT

Discussion Thread

Response (Todd Bundy)

I would refer you to write to our legal office at:

Illinois Department of Revenue
Legal Services Office 5-500
101 West Jefferson Ave
Springfield, IL 62702

Customer

Why, wouldn't it apply to all business conducted this way? Why only common carriers?

CUSTOMER NAME AND ADDRESS

On March 3, 2010, at 9:15 AM, IDOR wrote:

Response (Todd Bundy)

Yes that is only referring to common carriers.

Regards,
Todd Bundy

Customer

Does the tax exception in 140.501(d)(1) only apply to common carriers? We sell to out-of-state companies with Illinois events, where the client takes delivery at the out-of-state event, because we contract the shipping as part of the total cost. In some cases, the properties come back to IL after an event to be repaired, reconditioned or remodeled, at which point, we again ship the properties to an out-of-state event where the client takes possession. I believe, in this case, there would be no applicable sales or use tax or SOT. Please clarify. FYI: Most of these events are either trade shows or sporting events. Thank you.

DEPARTMENT'S RESPONSE:

You have inquired about a transaction that appears to be a service transaction. 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 their 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 servicemen's entire bill;
- (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or
- (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are 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.

An exemption is available for servicemen on property resold as an incident to a sale of service under an agreement by which the serviceman is obligated to make physical delivery of the goods from a point in this State to a point outside this State, **not to be returned to this State**, provided

such delivery is actually made. See 86 Ill. Adm. Code 140.501(b) (emphasis added). Please note unregistered de minimis servicemen may also claim the interstate commerce exemption. See 86 Ill. Adm Code 140.108(a)(2)(B).

Thus, at the time of the sale, if the serviceman knows that the item will return to the State for repair, recondition or remodel (for example, among others, the serviceman entered into a maintenance agreement with the purchaser for future repairs or remodeling), then the serviceman would not qualify for the interstate commerce exemption. See Section 140.501(b).

In your e-mail to the Department, you asked whether the exception in 140.501(d)(1) only applied to common carriers. That particular section of the Department's regulations specifically applies only to a "common carrier by rail", for example, a railroad. Based on the information in your letter and the information outlined above, we believe that 140.501(b) or 140.108(a)(2)(B), which applies to a serviceman who resells tangible personal property as an incident to a sale of service, is the applicable section of the Department's regulations to guide you in determining when tax liability is due relative to your business.

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

DMB:msk