

This letter discusses the Interstate Commerce exemption. See 86 Ill. Adm. Code 130.605. (This is a GIL.)

August 3, 2010

Dear Xxxxx:

This letter is in response to your letter dated June 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:

On behalf of our client, hereafter referred to as 'The Company', we are submitting this correspondence to seek guidance regarding acceptable documentation to support product sales of tangible personal property to out-of-state customers. These product sales are intended for resale and are destined for export and first use outside the state of Illinois.

Facts

The Company, whose corporate headquarters and sales offices are located in New York, sells tangible personal property on a wholesale basis to retailers, E-tailers and other distributors, both in the United States and internationally. The Company's product sales are made only to other resellers and not to end-user consumers, and are supported by properly executed resale certificates. All sales orders are received, approved and processed at The Company's New York sales office.

Product sales to customers located outside of the United States often require the assistance of a freight forwarder. A freight forwarder, forwarder, or forwarding agent is a company that organizes shipments for individuals or other companies and may also act as a carrier. A forwarder is often not active as a carrier and acts only as an agent, in other words as a third-party (non-asset-based) logistics provider that dispatches

shipments via asset-based carriers and that books or otherwise arranges space for these shipments.

Freight forwarders typically arrange cargo movement to an international destination. Also referred to as international freight forwarders, they have the expertise that allows them to prepare and process the documentation and perform related activities pertaining to international shipments. Some of the typical information reviewed by a freight forwarder is the seller's invoice, shipper's export declaration, bill of lading or other documents required by the carrier or country of export, import or transshipment. Once the product for resale is coordinated by the freight forwarder, the container is exported to the foreign country where the non-resident reseller will resell the merchandise to retailers.

Discussion

The sale and export of resale products to a foreign country is not subject to tax in Illinois. In an effort to document these transactions, The Company has prepared a Statement of Goods for Export form that it will provide to its foreign resellers to sign and return. The form will be used as an affidavit or a formal sworn statement of fact confirming the intent of the parties regarding the export transaction. Once the Statement of Goods for Export is signed and returned by the foreign reseller, this document will be retained by The Company and made available to the Illinois Department of Revenue upon request.

Illinois Tax Law

Illinois Reg. 86ILAC130.605(g) states in pertinent part,

Retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales.

Request:

We respectfully request that the Illinois Department of Revenue review the enclosed Statement of Goods for Export form and determine if the form provides satisfactory documentation in support of a non-taxable foreign export sale transaction.

We look forward to your response. If you have any questions, please call me.

DEPARTMENT'S RESPONSE:

We cannot provide you with the determination you seek in the context of a General Information Letter. Your client may be able to claim the interstate commerce exemption or resale exemption, depending on the actual transaction.

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. The tax is measured by the seller's gross receipts from such sales made in the course of such business. 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. Mere possession in Illinois is considered a use. Consequently, if the purchase occurs in Illinois, the purchaser must pay the Use Tax to the retailer. Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State immediately transports the property out of this State for use outside the State. See 86 Ill. Adm. Code 130.605(a)(2). The State of Illinois has no specific exemption for purchases by foreign or domestic travelers if the property is delivered and used in Illinois. Section 130.605 identifies a number of exceptions to this rule.

Section 130.605(d) states that the gross receipts from such sales are not subject to tax when a sale is conducted in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made. Such sales are considered to be sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax. The exemption also would apply when a seller makes delivery in Illinois to a freight forwarder who handles the arrangements for the property to be delivered outside the United States, not to be returned to the United States. Section 130.605(g). Section 130.605(f) identifies the type of documents a seller must retain in his or her records to support an exemption.

You indicate in your letter that the Company only makes product sales to other resellers and the sales are supported by properly executed resale certificates. A Certificate of Resale must be signed by the purchaser and state that the property purchased by him is purchased for purposes of resale. See 86 Ill. Adm. Code 130.1405. In addition to the statement that the property is being purchased for resale, 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; and
- 5) Registration Number, Resale Number, or a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

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 a retailer in

accepting such other documentation and the risk run by purchasers in providing such other documentation is that an Illinois auditor is more likely to require that more information be provided as evidence that the particular sale was, in fact, a sale for resale.

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,

Richard S. Wolters
Associate Counsel

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