

Auto repairmen and body shops incur Illinois Use Tax liability when purchasing consumable supplies such as sand paper and masking tape. See 86 Ill. Adm. Code 150.101. (This is a GIL.)

August 16, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 30, 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:

We are requesting a ruling on the following issue regarding sales and use taxes. We are a company that distributes paint and supplies to body shops. The question that has come up with some of our customers is whether we should be charging them sales tax at all and if so on which items we should be charging the tax. These particular customers have provided us with State of Illinois Resale Tax Certificates.

We have a copy of a prior ruling that states that we should be charging our customers sales tax on any product they purchase which doesn't get delivered to their customer when the repaired car is done. Some examples are sandpaper, masking tape and masking paper. These items are all products the body shops use to repair the cars but don't actually get delivered with the car or stay on the car when repairs are completed.

I called and spoke with Caroline in the customer service department at the Illinois Department of Revenue. Her opinion was as long as our customers provide us with Resale Certificates that we should not charge them sales tax on any products they purchase from us. She stated it is up to the body shop to figure out what they need to pay tax on. We think she is correct as we have no idea how the body shops bill their customers for sales tax. The body shops state that they bill their customers for all products and sales tax, including the consumables.

Our other question is when the body shops purchase equipment and tools from us such as spray guns or wrenches we know they don't resell those, should we charge sales tax on these items or is it the body shop's responsibility to pay the tax to you.

We were audited approximately ten years ago and have been charging sales tax on the equipment and consumable items since the 1990's. Nothing was said by the auditors that we were doing things wrong at that time.

Ultimately we need to know whether we should be charging any sales tax at all to our customers who have provided us with a Resale Certificate and if so which items are then considered taxable and which are not? I have enclosed a copy of the old ruling from 1990 that we have been using for reference up to this point.

We appreciate your time and attention regarding this matter and look forward to you providing us with a ruling.

DEPARTMENT'S RESPONSE:

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 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 the Retailers' Occupation Tax liability incurred on those sales.

The taxability of sales of tangible personal property to automobile repairmen and body shops will depend upon the use of the items being sold. An item of tangible personal property can only be purchased tax-free on the basis of the resale exemption when it will be physically incorporated into a product that will be sold. Purchases of tangible personal property that are not transferred to customers, but instead are used by the automobile repairmen or body shops, are not eligible for the resale exemption and are taxable when purchased. These purchases are taxable because the items are used or consumed by the purchasing business. Examples of such items are paint thinners and paint reducers, masking tape, paintbrushes, sandpaper, towels, reducers, abrasives, paint guns, wrenches, shop tools and other items used or consumed during repair jobs.

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.

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.

If automobile repairmen or body shops do not provide proper Certificates of Resale that contain registration or resale numbers that are valid on the date they are given, their suppliers will likely be unable to rebut the presumption that such sales to the automobile repairmen or body shops for the types of consumables described above were not for resale. Simply identifying consumables on repair tickets or invoices for repair services will be insufficient to rebut the presumption that such consumables were not transferred to the customer. Purchasers should not be cavalier in making such a certification. If the Department determines the purchases were not for resale, the automobile repairmen or body shops will be liable not only for Use Tax, but penalty and interest as well.

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

RSW:mzk