

This letter concerns sales for resale. See 86 Ill. Adm. Code 130.1401. (This is a GIL.)

December 10, 2010

Dear Mr. Xxxxx:

This letter is in response to your letter dated October 18, 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 am requesting a private letter ruling for Retailers [sic] Occupation Tax as it pertains to INDIVIDUAL doing business as BUSINESS.

In July, 2010, I filed an REG-1 Illinois Business Registration Application, since I began employing a salesman. Based on my response that I had Retail Sales, it triggered the requirement of filing a quarterly Sales and Use Tax Return.

I am requesting a ruling that my business be exempt from filing a Sales and Use Tax Return, since all of my seed sales are to farmers. Upon research of the Illinois Department of Revenue Regulations: Title 86, Part 130, Section 130.2110 Sellers of Seeds and Fertilizer: It is my understanding that a person who sells seeds to purchasers who employ such seeds for raising crops for sale are selling seeds to purchasers for the purpose of resale and are not required to remit Retailers' Occupation Tax measured by their gross receipts from such sales.

Your consideration of this matter is greatly appreciated.

DEPARTMENT’S RESPONSE:

In general, the Illinois Retailers’ Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the

sales are specifically exempted, such retailers must collect and remit the sales tax. See 86 Ill. Adm. Code 130.101.

When persons sell seeds to purchasers who use the seeds in raising crops that they will resell, the sale of seeds is not taxable as a sale for resale. However, when persons sell seeds to purchasers who use the seeds in raising grass, crops, or other plants that they use and not resell, such vendors are engaged in the business of making retail sales of the seeds and are required to remit Retailers' Occupation Tax to the Department on their gross receipts from such sales. See 86 Ill. Adm. Code 130.2110.

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 a person or entity makes sales that are exclusively (*i.e.*, 100%) for resale, that person or entity is not required to register under the Illinois Retailers' Occupation Tax Act when making such sales. See *Dearborn Wholesale Grocers, Inc. v. Whitler*, 82 Ill.2d 471 (1980). However, if a person

or entity engages in making both wholesale and retail sales, they are required to register under the Retailers' Occupation Tax Act and file monthly sales tax returns and document the exempt status of their wholesale transactions. See *Tri-America Oil Company v. Department of Revenue*, 102 Ill.2d 234 (1984).

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