

This letter concerns Use Tax liability as a result of a merger. See 805 ILCS 5/11.50. (This is a GIL.)

February 9, 2011

Dear Xxxxx:

This letter is in response to your letter dated December 27, 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 would like to request a letter ruling on the following question.

In late 2007 ABC changed ownership.

- The new owners created a corporation, XYZ on DATE, 2007.
- On DATE, 2007 the new owners acquired substantially all of the assets and liabilities of ABC and commenced operations.
- On DATE, 2007 ABC was merged into XYZ.
- On DATE, 2007 XYZ was changed to BUSINESS.

While the transaction was a stock sale, the assets of the company were revalued to reflect the price paid.

Our question is, do we continue to pay use/sales tax on our rental equipment used in Illinois based on prior amounts paid, or do [sic] start over as of DATE using the new values. In essence will we need to pay tax on assets we paid tax on prior to the sale?

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 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.

The Illinois Business Corporation Act provides that all property owned by each of the companies that are part of the merger vests with the surviving corporation. In addition, the surviving corporation obtains all of the debts, liabilities, and other obligations of the each of the corporations that are part of the merger. The transfer of the assets and liabilities to the surviving corporation takes place as a matter of law and is not considered a sale at retail. 805 ILCS 5/11.50. Such a transfer does not result in either Retailers' Occupation Tax or Use Tax liability.

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:msk