

This letter responds to an annual survey. See 86 Ill. Adm. Code, Parts 120, 130, 140, and 160. (This is a GIL.)

July 20, 2012

Dear:

This letter is in response to your email dated June 7, 2012, 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:

The UNIVERSITY, in conjunction with Commerce Clearing House, annually undertakes a major information collection effort with respect to the application of the tax laws of the states. UNIVERSITY's goal in gathering this information is to assemble and publish the GUIDE. As the market has shown, such a publication is a useful reference source for departments of revenue, attorneys, corporate tax departments, and public accounting firms.

UNIVERSITY is in the process of updating the GUIDE for its 2013 annual edition. Accordingly, we ask for your state's assistance in preparing this important publication. I have attached two Microsoft Word files—one for income tax and one for sales tax—to serve as this year's questionnaire. The questionnaire follows the same format as in past years. (If you do not have a copy of your 2011 response, and it would be helpful to you in completing the 2012 questionnaire, please let me know and I will email you a copy.)

This year, the numbering scheme and the sequence of the questions remains essentially the same. Also, please note that the new questions are highlighted in red font. Therefore, you should be able to easily follow the changes from last year to this year. Because of anticipated time constraints for respondents, again this year we are asking that you only respond to the questions for which your answers require a change and the new questions. All unanswered questions will be considered the same as last year's answer unless otherwise noted.

Please complete the 2012 questionnaire and return it by July 16, 2012. The enclosed questionnaire should be answered in accordance with laws in effect as of July 1, 2012. If there is legislation pending or recently enacted that would alter your answers, please

explain any such changes that you are aware of at the time the questionnaire is completed.

Beginning in the fall 2000, UNIVERSITY began a tuition assistance program for state department of revenue employees in appreciation for their assistance in publishing the GUIDE. A limited amount of tuition assistance is available for courses in UNIVESITY's Online Graduate Certificate in State and Local Taxation. This Certificate program is the first of its kind in the nation to be offered totally online. To receive the Certificate, students must complete the four-course curriculum. For further information about the program or available tuition assistance contact Mr. Z at the UNIVERSITY.

If you have any questions about the questionnaire or a specific question, please contact me. Thank you for your continued cooperation and support. Your contributions are extremely valuable in maintaining the quality of this outstanding reference work. A complimentary copy of the 2013 GUIDE will be sent to you when it is published next year.

[59] TAXATION OF MOVING AND RELOCATION SERVICES	Yes	No
▪ Does your state impose tax on household moving services?	<input type="checkbox"/>	<input type="checkbox"/>
▪ Does your state impose tax on business moving services?	<input type="checkbox"/>	<input type="checkbox"/>
▪ If moving services are exempt, does moving or relocating items within a building still qualify for the exemption?	<input type="checkbox"/>	<input type="checkbox"/>
▪ Is the temporary storage of their customers' possessions by the moving company exempt?	<input type="checkbox"/>	<input type="checkbox"/>
▪ If YES, after some number of days, does the temporary storage service become taxable?	<input type="checkbox"/>	<input type="checkbox"/>
▪ If YES, after how many days does the temporary storage service become taxable? <input type="checkbox"/> 30 days <input type="checkbox"/> 45 days <input type="checkbox"/> 60 days <input type="checkbox"/> 90 days <input type="checkbox"/> Other, explain:		
▪ Are sales of packing materials (boxes, padding, etc.) subject to tax?	<input type="checkbox"/>	<input type="checkbox"/>
▪ If YES, does packing material become non-taxable to the customer if the moving company does the packing for the customer? (In which case the moving company would be deemed to be the consumer of the items used and would owe use tax on the items used.)	<input type="checkbox"/>	<input type="checkbox"/>
▪ Is the rental of packing materials (padding, lifting gear, etc.) subject to tax?	<input type="checkbox"/>	<input type="checkbox"/>

[60] SPECIAL EVENT SALES TAX EXEMPTION

YES NO

<ul style="list-style-type: none"> ▪ Does your state provide a special sales tax exemption for events that promote tourism or provide positive exposure for the state, e.g., professional golf tournament, NASCAR race or track exemption, other professional sports exemption? <input type="checkbox"/> YES <input type="checkbox"/> NO ▪ If YES, what qualifies for the exemption? <ul style="list-style-type: none"> <input type="checkbox"/> Supplies used in activity <input type="checkbox"/> Equipment used in activity <input type="checkbox"/> Other personal property used in activity <input type="checkbox"/> Please specify nature of "other qualifying property," if applicable:

[61] DISPLAYING TAX AMOUNT ON INVOICE

YES NO

<ul style="list-style-type: none"> ▪ If tax is added to the selling price as an additional charge, must it be shown separately on the invoice? <input type="checkbox"/> YES <input type="checkbox"/> NO ▪ If YES, must the separately billed tax amount be separately labeled "tax" on the invoice? <input type="checkbox"/> YES <input type="checkbox"/> NO ▪ If YES, must the separately billed tax include your state's name on the invoice billing the tax, i.e., "State A Tax?" <input type="checkbox"/> YES <input type="checkbox"/> NO
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[62] REPOSSESSIONS

YES NO

<ul style="list-style-type: none"> ▪ Is the recovery of repossessed goods and the transfer of title from the debtor to the retailer or financial institution considered a retail sale for sales tax purposes? <input type="checkbox"/> YES <input type="checkbox"/> NO
<ul style="list-style-type: none"> ▪ When repossessed goods are sold at retail, must the sale be reported in the retailer's gross receipts? <input type="checkbox"/> YES <input type="checkbox"/> NO
<ul style="list-style-type: none"> ▪ When repossessed goods are sold for resale, how is the sale reported (check one)? <ul style="list-style-type: none"> <input type="checkbox"/> Gross receipt and an exempt sale for resale <input type="checkbox"/> Bad debt allowance recovery <input type="checkbox"/> Other, explain:

[63] DEMAND FOR PAYMENT IN BANKRUPTCY

YES NO

<ul style="list-style-type: none"> ▪ If a corporation declares bankruptcy, may the state file a demand for payment against any "responsible person" for the corporation for any corporate tax liability? <input type="checkbox"/> YES <input type="checkbox"/> NO ▪ If YES, is there a time limit for making the demand for payment? <input type="checkbox"/> YES <input type="checkbox"/> NO ▪ If YES, specify time limit: _____
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DEPARTMENT'S RESPONSE:Taxation of Moving and Relocation Services

Illinois does not have a statute that explicitly addresses the taxation of moving and relocation services. Illinois Service 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 his activities. See 86 Ill. Adm. Code 140.101.

However, a retailer making a sale of packaging materials to a moving/van line or a storage company is making a sale of tangible personal property to the end-user of that property. Consequently, the sale is an Illinois retail sale subject to Retailers' Occupation Tax and Use Tax liabilities.

Special Event Sales Tax Exemption

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. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. The retailer must pay Retailers' Occupation Tax to the Department based upon its gross receipts, or actual amount received, from the sale of the tangible personal property. 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 35 ILCS 105/3; 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 retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

Illinois does not "provide a special sales tax exemption for events that promote tourism or provide positive exposure for the state, e.g., professional golf tournament, NASCAR race or track exemption, other professional sports exemption".

Displaying Tax Amount on Invoice

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. According to 86 Ill. Adm. Code 150.401, the Use Tax shall whenever possible and practicable when collected, be stated as a distinct item separate and apart from the selling price of the tangible personal property. It is to be assumed that the seller is not collecting the tax if he does not state it as a separate item from the selling price of the tangible personal property.

However, 86 Ill. Adm. Code 150.1305 describes the circumstances that warrant public display of a sign stating that the selling price of the tangible personal property includes the Use Tax and the local Retailers' Occupation Tax if applicable. Section 150.1305 states that if a retailer is required or authorized to collect the Use Tax, his records must show that he states such tax separately to the purchaser from the selling price of the tangible personal property which he is selling. However, the Department can waive this requirement if it finds that it is not possible, under the facts of the case, for the retailer to collect the tax from the purchaser as a separate item from the selling price.

The Department can allow the retailer to show compliance with the Section 150.1305 separately-stated requirement by publicly posting an appropriate sign. However, the sign procedure may not be relied on to prove collection of the tax by the retailer from his customers as a separate item in types of transactions in which such retailer does issue invoices or sales tickets to customers. If a retailer issues receipts for sales to his or her customers, the Use Tax must be separately stated on the invoice.

Under the Service Occupation Tax, servicemen are taxed on tangible personal property transferred as an incident of sales of service. Under the Service Use Tax Act, a tax is imposed on the privilege of using, in Illinois, tangible personal property that is received anywhere as an incident to a purchase of service from servicemen. See 86 Ill. Adm. Code 160.101, which describes the nature of the tax.

Generally, under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. The liability of servicemen in these transactions may result in either Service Occupation Tax liability or Use Tax liability for servicemen depending upon which tax base the servicemen choose to calculate their tax liability. Servicemen may calculate their tax base 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 the Retailers' Occupation Tax Act.

Although not required unless requested by the service customer, the Service Use Tax may be separately stated as a distinct item on the service bill. 35 ILCS 115/3a; 86 Ill. Adm. Code 160.115(b). Under the fourth method, 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. 86 Ill. Adm. Code 140.108.

Repossession

The repossession of tangible personal property which is the subject of a perfected security interest by the secured creditor does not constitute a sale or transfer by the taxpayer as contemplated by 35 ILCS 120/5j and 86 Ill. Adm. Code 130.1701(g)(3).

When repossessed tangible personal property is sold at retail the gross receipts are subject to Retailers' Occupation Tax unless the sale is subject to one or more of the exemptions contained in the Act.

Isolated or occasional sales of tangible personal property at retail by persons who do not hold themselves out as being engaged (or who do not habitually engage) in selling such tangible personal property at retail do not constitute engaging in a business of selling such tangible personal property at retail. See 86 Ill. Adm. Code 130.110. Such persons do not incur Retailers' Occupation Tax liability on the gross receipts from such sales. Consequently, the purchasers of that tangible personal property do not incur a Use Tax liability on those purchases. See 86 Ill. Adm. Code 150.101.

Resale transactions are governed by the Department's administrative rule concerning "Sales of Tangible Personal Property to Purchasers for Resale" found at 86 Ill. Adm. Code 130.210.

Demand for Payment in Bankruptcy

Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has control, supervision or responsibility of filing returns and making payment of the amount of any tax imposed in accordance with that Act and who willfully fails to file the return or make the payment to the Department or willfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon. 35 ILCS 735/3-7

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