

ST-13-0062 – GIL 10/22/13 CERTIFICATES OF RESALE

This letter discusses the standard drop-shipment scenario and certificates of resale. *See* 86 Ill. Adm. Code 130.225 and 86 Ill. Adm. Code 130.1405. (This is a GIL.)

October 22, 2013

Dear Xxxxx:

This letter is in response to your letter dated July 16, 2013, 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 had a sale where the out of state purchaser had us drop ship the merchandise to the customer in Illinois. We charged sales tax on the order as the purchaser is not registered to collect Illinois tax.

The purchaser, instead of paying the sales tax, has sent us a copy of a letter from the Illinois customer stating they will self-assess Illinois use tax. Based on this letter, is it permissible not to collect sales tax from the purchaser?

Under normal circumstances, if the out of state purchaser is charged sales tax, can they pass the tax on to the customer? If not, does the customer have to pay use tax as well?

DEPARTMENT’S RESPONSE:

The Department’s regulations regarding Drop Shipments can be found at 86 Ill. Adm. Code 130.225 and Seller’s Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale at 86 Ill. Adm. Code 130.1405. A drop-shipment situation is normally one in which out-of State purchaser (Purchaser) makes a purchase for resale from a company (Company) which is registered with Illinois and has that Company drop-ship the property to Purchaser’s customer (Customer) located in Illinois.

Your letter posits two separate transactions. The first transaction occurs when Company sells to Purchaser. An additional transaction occurs when Purchaser sells to Customer. Company, as a seller required to collect Illinois tax, must either charge and collect tax or document appropriate exemptions when making deliveries in Illinois. In order to document the fact that its sale to Purchaser is a sale for resale, Company is obligated by Illinois to obtain a valid Certificate of Resale from Purchaser. *See* 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. 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) the 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.

If Purchaser has no nexus with Illinois, it is unlikely that Purchaser would be registered with Illinois. If that is the case, and if Purchaser has no contact with Illinois which would require it to be registered as out-of-State Use Tax collector for Illinois, then Purchaser could obtain a resale number which would provide it the ability to supply the required number to Company in conjunction with a Certificate of Resale.

Resale numbers are issued to persons who make no taxable sales in Illinois but who need the ability to provide suppliers with Certificates of Resale when purchasing items that will be resold. So long as Purchaser does not act as an Illinois retailer (*see* 86 Ill. Adm. Code 130.605(a)), and so long as it does not fall under the definition of a “retailer maintaining a place of business in this State” (*see* 86 Ill. Adm. Code 150.801), its sales to Illinois customers are not subject to Illinois Retailers’ Occupation Tax liability, and it cannot be required to act as a Use Tax collector. So long as this is true, Purchaser qualifies for a resale number that does not require the filing of tax returns with the Illinois Department of Revenue. *See* 86 Ill. Adm. Code 130.1415. The fact that Purchaser may not be required to act as a Use Tax collector for Illinois does not relieve Customer of Use Tax liability. Therefore, if Purchaser does not collect Illinois Use Tax from Customer, Customer would have to pay its tax liability directly to the Illinois Department of Revenue.

Active registration or placing resale numbers on Certificates of Resale are still the preferred methods. However, the Illinois Retailers’ Occupation Tax Act leaves open the possibility of other options to document the resale nature of the sale:

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. *See* 35 ILCS 120/2c.

Again, including a registration or a resale number from Purchaser on a Certificate of Resale is the preferred method for documenting that the purchase from Company is a purchase for resale. Unless Purchaser is able to document a resale exemption for the Seller on its purchases, Use tax will be incurred on both of these transactions. However, in light of this statutory language, a certification from Purchaser on a Certificate of Resale in lieu of resale number which described the drop-shipment situation and the fact that Purchaser has no contact with Illinois which would require it to be registered and that it chooses not to obtain an Illinois resale number would constitute evidence that this particular sale is a sale for resale, despite the fact that no registration number or resale number is provided. The risk run by Company in accepting such a certification, and the risk run by Purchaser in providing such a certification, is that an Illinois auditor may be more likely to go behind a Certificate of Resale which does not contain a valid resale number and require that more information be provided by Company 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,

Cara Bishop
Associate Counsel

CB:msk