

March 3, 2014

Dear Xxxxx:

This letter is in response to your letter dated December 30, 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 started a project back in DATE. I emailed to REV.TA-Sales a question on who pays taxes on the project. My question was:

We have a subcontract with a contractor who is installing new pipeline on the PROJECT that starts in ILLINOIS. We are the subcontractor who will restore agricultural drainage tile that is destroyed and reroute some drainage tile lines as the contractor is putting in the pipeline.

I have enclosed the correspondence with the sales revenue agent. I have been paying sales and use tax on the tile we are installing and called to ask a question about the use tax and were told that I should have been charging the contractor sales tax on the tile or they should be self-assessing on the entire amount billed even if it included labor.

I need to know what is correct and if I need to fix anything, how I need to do that. Please feel free to contact me if you need more information or have questions.

DEPARTMENT’S RESPONSE:

If a person or business is contractually required to purchase tangible personal property for incorporation into real estate, then it would be acting as a construction contractor. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. Persons from other states who act as construction contractors in Illinois by permanently affixing tangible personal property to real estate owe Illinois Use Tax on the cost price of the tangible personal property affixed to that real estate.

The Illinois Use Tax Act provides, that in order to prevent multi-state taxation, the Use Tax does not apply to the use, in Illinois, of tangible personal property acquired outside of this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of such property, to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property. Please note that any tangible personal property provided by the customer would not subject the construction contractor to use tax liability (the customer itself will incur the use tax liability on the purchase of that property).

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to “reimburse” the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as “sales tax,” but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor’s part.

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

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