

Generally, a government contractor who purchases items to fulfill his obligations under a contract with a governmental unit purchases those items for use. See, U.S. v. New Mexico, 455 U.S. 720, 102 S. Ct. 1373 (1982). However, if the contract with the governmental unit explicitly requires the contractor to sell those items to the governmental unit, the purchase of those items by the contractor can be structured as purchases for the purpose of resale to the governmental unit. See 86 Ill. Adm. Code 130.2076. (This is a GIL.)

April 30, 2015

Dear XXXX:

This letter is in response to your letter dated February 18, 2015, 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](http://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:

COMPANY (COMPANY) has a contract with the CITY to provide professional services for the Operations, Maintenance and Management of the CITY Regional Wastewater Treatment Plant, and services associated with the implementation, management and enforcement of a citywide Industrial Pre-Treatment program.

I have reviewed Illinois Government Contracting Tax regulations and all related Private Letter Rulings issued by the Illinois. Illinois issued Private Letter ruling ST-13-0001-PLR (7/31/2013) that clearly states that a contract between a governmental unit and a contractor must meet the following:

- 1) There is a contract between the purchaser and the governmental body that requires the purchaser to provide tangible personal property to the governmental body.
- 2) The contract is specific in documenting a sale of tangible personal property from the purchaser to the governmental body. The contract must specify that the tangible personal property is transferred to the governmental body. However, the contract does not have to be item specific. For example, a statement that the title to all the tangible personal property that is purchased shall pass to the

governmental body is sufficient. The transfer may be immediate or subsequent to the completion of the contract.

The original 5-yr contract signed between COMPANY and CITY in December 2012, prior to the issuance of ST 13-0001-PLR, did not include the language outlined above. If we amend our contract to include such language, would it be applied retro-active to the beginning of our contract signed in 2012?

COMPANY (COMPANY) is respectfully requesting a Private Letter Ruling to address our questions regarding the applicability of amendments to the a governmental contracts.

#### **DEPARTMENT'S RESPONSE:**

We are unable to provide you with a specific answer without reviewing the written contracts between the parties. We have set out some general information that may be of assistance to you in determining your sales tax liabilities.

As you have noted in your request, Section 130.2076 of the Retailers' Occupation Tax (86 Ill. Adm. Code 130.2076) regulations sets forth specific rules for sales to purchasers performing contracts with governmental bodies. Section 130.2076 includes language regarding contractors that purchase items to fulfill obligations under a contract with a governmental unit. Generally, a government contractor who purchases items to fulfill his obligations under a contract with a governmental unit purchases those items for use. See, U.S. v. New Mexico, 455 U.S. 720, 102 S.Ct. 1373 (1982). However, if the contract with the governmental unit explicitly requires the contractor to sell those items to the governmental unit, the purchase of those items by the contractor can be structured as purchases for the purpose of resale to the governmental unit. In order for this to happen, there must be a contract between the purchaser and the governmental body that requires the purchaser to provide tangible personal property to the governmental body, and the contract must be specific in documenting a sale of tangible personal property from the purchaser to the governmental body. Subsection 130.2076(a)(2) states that "the contract does not have to be item specific." For example, a statement that title to all of the tangible personal property that is purchased shall pass to the governmental body is sufficient. The transfer may be immediate or subsequent to the completion of the contract.

Your letter mentions that the original contract which was signed in 2012 did not include the above language. Upon audit, an auditor will look at the contract that was in effect at the time of the transaction in question. Though we cannot provide a legal response to your question, it appears that the original contract would remain in effect prior to the date of modification. The modified contract would not apply retroactively.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Cara Bishop  
Associate Counsel

CB:kd