

This letter discusses the taxability of containers, wrapping, and packing materials and related products. See 86 Ill. Adm. Code 130.2070. (This is a GIL.)

August 31, 2015

Dear Mr. XXXX:

This letter is in response to your letter dated May 8, 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 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 am writing to request a private letter ruling. COMPANY is a manufacturer of cable products and purchases steel reels to place the manufactured cable on for shipping to our customers. These reels are capitalized when we purchase them and we maintain ownership to the reel even after shipping the reel to and invoicing our customer for the deposit. When a customer purchases the cable we charge a separately stated amount for the reel deposit on our invoice. Based upon the above, please answer 1 and 2 below:

1. Should we charge sales tax or use tax on the separately stated steel reel deposit if the customer provided either a resale or direct pay certificate for the purchase of the cable?
2. Should we charge sales or use tax on the separately stated steel reel deposit if the customer is taxable on the cable portion of the invoice?

3. If we don't charge the reel deposit on the initial cable invoice (the cable is on the reel) but provide the customer a 1 year window to return the reel and only after that 1 year period if they fail to return the reel, only then do we invoice for the reel deposit. Based upon 3, please answer the following questions:

a. If the customer initially provided a resale or direct pay certificate when they purchased the cable 1 year prior, should we now (1 year later) charge sales/use tax on the reel deposit invoice?

b. If the customer did not provide a resale or direct pay certificate when they purchased the cable 1 year prior, should we now (1 year later) charge sales/use tax on the reel deposit invoice?

COMPANY considers the steel reels to be returnable and thus we pursue the customer until they return them to us. Should we pay or self-assess sales/use tax when we purchase of the reels?

Please respond as soon as possible. Please contact me with any questions at (XXX) XXX-XXXX.

DEPARTMENT'S RESPONSE:

Based on the limited information in your letter, we cannot determine the exact nature of the transactions involved. Your company's tax liability for the reels and your customer's tax liability for the reel deposit are largely intertwined and dependent on a few factors. The sale of containers, as defined in 86 Ill. Adm. Code 130.2070(a), is not subject to Retailers' Occupation Tax liability or Use Tax when the purchasers of those containers transfer to customers the ownership of the containers together with what is contained in them. If your company transfers ownership of the cable reels to its customers together with the cable, the cable reels may be purchased without incurring tax as purchases for resale. See subsection (b) of Section 130.2070. You must provide your suppliers with Certificates of Resale that contain the information set out in 86 Ill. Adm. Code 130.1405.

In the instances when your company transfers ownership of the cable reels to your customers together with the cable, the deposit for the cable reel is considered to be a component part of the gross charges for the sale of the cable it is attached to. Thus, if your customer provides a resale certificate for the cable, the deposit is included in the charge for the cable, and the entire sale is considered to be a sale for resale.

Your letter mentions that your company retains ownership of the reels subsequent to their shipment to your customer. Please note that your company's purchase of the cable reels would not qualify for the resale exemption if your company does not transfer the ownership or title of the cable reels to your customers and instead retains and reuses the cable reels or discards them. See subsection (c)(1) of Section 130.2070. In such instances, your company would incur Use Tax when it purchases the cable reels because your company would be considered the user of the

reels. In this instance, the customer who purchases cables from your company would not incur tax on the reel deposit.

If the reels your company purchases are used to transfer your product to retail customers with no binding agreement that those reels (or a like number of similar reels) be returned to you, your company's original purchase of the reels would be a tax-exempt purchase for resale. See Sec. 130.2070(b)(1). We cannot determine the exact nature of these transactions based on the limited information in your letter. However, if you do not transfer title to the reels, the deposit for the reels will generally not be included in gross receipts when you make a sale to a customer. Instead, in that case, your company should self assess Use Tax on the reels.

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

CJB:mdb