

ST 16-0010-GIL 02/05/2016 GROSS RECEIPTS

In the absence of explicit agreement, identification of goods to a contract occurs, if the contract is for the sale of future goods, when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers. See 86 Ill. Adm. Code 130.340. (This is a GIL.)

February 5, 2016

Dear Xxxxx:

This letter is in response to your letter dated June 5, 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 requesting a formal ruling on the issues listed below.

1. We manufacture pressure vessel [sic] for the oil and gas industry. When a vessel is contracted by our customer and the cost is over \$\$\$, we do progressive billing at 4 stages of the manufacturing process. The manufacturing of the vessel could take anywhere between 3 months to a year. Usually the sales tax is invoiced on the final invoice. So the sales tax might not be paid on the vessel in the same year the first invoice was sent to and paid by the customer.

One of the reasons we invoice the sales tax on the final invoice is because our customers do not always know to which state the vessel will be shipped. Another reason is our customer requests us to bill all sales tax on the final invoice.

2. When moving a vessel, our customer required a crane to move the vessel from one location to another. Our company ordered the crane and the crane company billed us instead of our customer. Instead of having the crane company bill the customer, we paid the invoice and sent an invoice to our customer billing them for the exact amount the crane company billed us. There was no sales tax on either invoice. Our customer is not tax exempt.
3. We were requested to visit one of our customers [sic] location to inspect their site. We did not charge the customer for our inspection but the customer agreed to reimburse us for travel expenses. We invoiced the customer exactly what our expenses were. Would the reimbursement of these travel expenses be taxable?

Please provide a ruling on how the Illinois Department of Revenue requires the filing and payment of sales / use taxes on the above issues.

If you have any questions, please feel free to contact me.

DEPARTMENT'S RESPONSE:

Sales tax on final invoice:

For general information purposes, please see the Department's regulation entitled "Deposit or Prepayment on Purchase Price," found at 86 Ill. Adm. Code 130.430. That regulation provides that payments on the purchase price must be reported as gross receipts for Illinois sales tax purposes when the item which is being sold has been identified to the contract for sale. Property is identified to a contract pursuant to the standards set forth in Section 2-501 of the Uniform Commercial Code (found at 810 ILCS 5/2-501).

Section 2-501 provides that, "Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs (a) when the contract is made if it is for the sale of goods already existing and identified; (b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers; (c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer."

Assuming there is no specific agreement otherwise, in the situation you have described, the item being sold would generally be identified to the contract when it is shipped, marked or otherwise designated by the seller as goods to which the contract

referred. At that time, which may coincide with issuance of the final invoice, payments on the purchase price become taxable.

Hiring a crane to move property & site inspection

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. 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then neither Illinois Retailers' Occupation Tax nor Use Tax would apply. Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. Depending on the nature of the transaction, Service Occupation Tax or Service Use Tax could apply, but if no tangible personal property is being transferred to customers incident to the services being provided, then neither Illinois Service Occupation Tax nor Service Use Tax would apply.

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,

Samuel J. Moore
Associate Counsel

SJM:mdb