

ST 16-0062 GIL 11/03/2016 SALE AT RETAIL

Most retailers will not act as a construction contractor. If a purchaser buys an appliance from a retailer and the purchaser contracts with the retailer separately for installation, the seller must pay ROT on receipts received from the sale of the dishwasher. Installation would only be taxable if it was included in the selling price of the product. 86 Ill. Adm. Code 130.1940. (This is a GIL.)

November 3, 2016

Dear Xxxxx:

This letter is in response to your letter dated February 25, 2016 in which you requested 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:

I am writing you today as a result of the Department's Compliance Alert of 2015 regarding construction contracts and the application of the Retailer's Occupation Tax (ROT) pursuant to Administrative Code 86/130.1940. Specifically, ASSOCIATION would request an expedited review of three questions.

1. Why dishwashers appear to be treated separately from the likes of gas appliances and appliances requiring plumbing or other connections? For example, from a connection stand-point, dishwashers are no different than a refrigerator with an ice-maker and/or water ice dispenser. Likewise, they are no different than a gas appliance in that a connection to a gas line is required just as a connection to plumbing is required for the refrigerator or dishwasher. If the question revolves around whether or not it is 'built-in', ASSOCIATION believes the same problem exists in that refrigerators, stoves, ovens, dishwashers, and other appliances can all be built-in.
2. There appears to be a disparity in the tax treatment of appliances depending upon whether they were purchased from a retailer and installed by the

retailer, whether directly or through a preferred contractor, or purchased through a construction contractor and installed by the construction contractor or his/her sub-contractor. For example, if a consumer purchases a refrigerator from a retailer and has one of the retailer's preferred contractors, or the retailer's personnel directly, install the item, ROT applies. However, if the consumer contracts with a construction contractor and as part of that contract the contractor purchases and installs the same refrigerator, Use Tax applies. For the purposes of this regulation, the treatment should be identical. Either the appliance in question is taxed at cost-price or sale price regardless of who purchased and installed them. To do otherwise place similarly situated actors in the marketplace on unequal footing.

3. Finally, when considering Part 130.2075, can a retailer be a contractor?

ASSOCIATION would look forward to meeting with the Department at the earliest possible date to resolve these questions. Thank you in advance for the consideration we know you will give this request. I look forward to hearing from you.

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

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. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales.

If a customer purchases tangible personal property over-the-counter without installation, for example an appliance or counter tops, then the retailer owes Retailers' Occupation Tax and must collect the corresponding Use Tax from the customer. If a customer purchases appliances or counter tops over-the-counter and separately contracts for installation of the appliances or cabinets, then the retailer owes Retailers' Occupation Tax and must collect the corresponding Use Tax from the customer on the sale of the appliances or cabinets. See 86 Ill. Adm. Code 130.450.

Most retailers do not act as construction contractors. When a retailer engages in the business of selling tangible personal property at retail and such tangible personal property is installed by the retailer or other installer, the receipts from such installation charges must be included in the gross receipts upon which his Retailers' Occupation Tax liability is measured if such installation charges are included in the selling price of the property being sold. If, however, the seller and buyer agree upon the installation charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation charges are not a part of the "selling price" of the tangible personal property which is sold. Instead such charges constitute a service charge, separately contracted for, which need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.450. For example, a person may purchase a dishwasher at an appliance store and the seller and purchaser enter into a separate agreement for

the installation of the dishwasher. The seller in this case would pay ROT on the receipts from the sale of the dishwasher. Installation would only be taxable if it was included in the selling price of the product.

A contract that provides for the improvement of real estate by a contractor who both provides and permanently affixes tangible personal property to real estate is considered a construction contract. Obvious examples of the type of tangible personal property that is permanently affixed or incorporated into a structure include bathtubs, sinks, lavatories, cabinets built into the structure, water heaters and water softeners. Stoves and refrigerators that are not free standing and are built into the structure are additional examples. Regulations governing the tax liabilities of construction contractors in Illinois may be found at 86 Ill. Adm. Code 130.1940 and 130.2075 on the Department's website. The term "construction contractor" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The Department does not consider a sale of a dishwasher by a retailer with a separate agreement or listing on the invoice for installation to be a construction contract. 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, these contractors incur Use Tax liability for such purchases based upon their cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075.

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,

Richard S. Wolters  
Associate Counsel

RSW:bkl