

When a construction contractor permanently affixes tangible personal property to real property, the contractor is deemed the end user of that tangible personal property. As the end user, the contractor incurs Use Tax on the cost price of that tangible personal property. See 86 Ill. Adm. Code 130.2075. (This is a GIL.)

June 2, 2017

Dear Xxxxx:

This letter is in response to your letter dated April 12, 2017, 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 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 clarification on where sales/use tax should be paid (and to which state) in the following sales process. The string of players are as follows:

<u>Company</u>	<u>Role</u>	<u>Location</u>
COMPANY	Fabricator & Supplier of Granite Countertops	STATE
Installing Contractor	Purchases & Installs Granite Countertops	Iowa
Retail Dealer/Lumber Yard	Purchases from Installing Contractor (Product & Install)	Illinois
Residential Home Builder	Purchases completed services from the Retail Dealer	Illinois

What happens in this sales process is that the Builder contracts with the Retail Dealer for a countertop to be installed at either a new or remodel residence in Illinois. The Dealer then purchases both the product and install from the Installing contractor (located in Iowa) and has them perform the installation at the home located in Illinois.

The installing Contractor is being charged Iowa sales tax by COMPANY so they have a Tax Paid-up Inventory since they are considered the "end user". They invoice the Illinois Retail Dealer a completed contract price which includes use taxes already paid. The Retail Dealer is now trying to determine how they are to invoice the Illinois Builder. Currently, they are charging sales tax on their invoice to the Builder but it is our belief they should not be since sales/use tax has already been paid appropriately by the installing Contractor. This would result in double taxation for the same transaction.

Can you provide a written General Guidance on this transaction to make sure all parties within the sales chain understand where the sales/use is owed and paid? Also, the Retail Dealer would like to know how to report this on their Illinois Sales Tax return.

If you have any questions, please don't hesitate to call or email me. My Direct Dial number is ### and email is NAME@EMAIL.com.

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 reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

A contract that provides for both the sale and installation of tangible personal property that is permanently affixed or incorporated into a structure is considered a construction contract. The tax liabilities regarding 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. 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.

Therefore, any tangible personal property that a construction contractor purchases that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If such contractors did not pay the Use Tax liability to their suppliers, those contractors must register and self-assess their Use Tax liability and pay it directly to the Department. If the contractors have already paid a tax in another state regarding the purchase or use of such property, they will be entitled to a credit against their Illinois Use Tax liability to the extent that they have paid tax that was properly due to another state. See 86 Ill. Adm. Code 150.310.

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.

Section 130.1940(c) addresses situations where tangible personal property is permanently affixed or incorporated into a structure incident to a construction contract. As previously noted, a construction contractor does not incur Retailers' Occupation Tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures) incorporated into a structure as an integral part thereof for an owner when furnished and installed as an incident of a construction contract. A construction contract that provides for both the sale and installation of tangible personal property that is permanently affixed or incorporated into a structure may separately state the cost of installation and the cost of the tangible personal property and remain a construction contract for sales tax purposes. The fact that the installation costs and the tangible personal property costs are separately stated in the contract or on the billing does not change the tax consequences of the transaction.

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.

In your fact pattern, the installing contractor is acting as a subcontractor. It must self-assess Use Tax on its cost price of the counters and pay the tax directly to the Department. If the installing contractor has already paid a tax in another state regarding the purchase of the counters, it will be entitled to a credit against its Illinois Use Tax liability to the extent that it has paid tax that was properly due to another state. The retail dealer, or contractor, has no tax liability to the subcontractor. The subcontractor may seek reimbursement from the retailer for any tax the subcontractor may have paid, but the subcontractor may not bill the contractor for tax. Lastly, the retailer may seek reimbursement from the builder for reimbursement of tax the retailer may have paid the subcontractor, but the retailer may not bill the builder for tax.

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