

ST 18-0024-GIL 09/13/2018 SERVICE OCCUPATION TAX

Under the Service Occupation Tax Act, businesses providing services (*i.e.*, servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

September 13, 2018

Dear Xxxxx:

This letter is in response to your letter, 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 spoke with NAME in the State of Illinois Sales tax division. We have purchased a business in Illinois and want to make sure we are handling the sales tax situation on products that we well (sic) correctly. After discussions with her, I asked for some correspondence to put in the file to substantiate the conclusions given. She suggested that I request a letter ruling to determine the proper way of handling sales/use tax situations in our business.

I am requesting a ruling of the following scenarios. We sell and service garage doors, openers and related items on homes and businesses. Once they are affixed to the home or business they become real property.

1. Service Call- A homeowner calls us and asks us to fix their garage door. We go to the homeowner's residence and replace a few parts and service the door. Our charge for this y [sic] is \$\$\$ for the labor charges and we then charge \$\$\$ for the materials used. We actually only paid \$\$\$ for the materials when we purchased from our supplier. Please explain the tax, whether use and or sales in this situation and clarify what amounts are being taxed and under what classification (use or sales).
2. Quoted Project(Sample A) – Showing one lump sum amount for the project on the quote (the amount includes both materials and labor). Please see attached marked

“Sample A” We quoted \$\$\$ for the project. Labor is \$\$\$ and materials is \$\$\$. We only paid \$\$\$ for the materials from our supplier. Please let us know how this will be handled for sales and use tax purposes under the above scenario.

3. Quoted Project (Sample B) – Showing a breakdown of sales price of sales price of materials and labor on the quote to the customer. Please see attached marked “Sample B” Again the same scenario as above but with the quote being \$\$\$ but we show a breakdown of materials and labor that arrive at the \$\$\$ total on the quote. Labor is \$\$\$ and materials is \$\$\$. We only Paid \$\$\$ for the materials from our supplier. Please let us know how this will be handled for sales and use tax purposes under the above scenario. In addition, how and why is this scenario different from number 2(Sample A) above? If it actually is.
4. Over the Counter Sales – A customer comes in to our showroom and purchases 2 remote controls for this garage door openers. We sell the materials to the customer for \$\$\$ and we purchased the remotes from our supplier for \$\$\$. Under this circumstance, please provide any sales or use tax scenarios. If we are to pay use tax when we purchase materials, and sales tax when we sell, how do we get credit for the sales tax that we paid on the sales or use tax return.
5. Over the Counter Sales – A customer comes in to our showroom and purchases 2 garage doors to install on his house. We sell the materials to the customer for \$\$\$ and we purchased the doors from our supplier for \$\$\$. Under this circumstance, please provide any sales or use tax scenarios. If we are to pay use tax when we purchase materials, and sales tax when we sell, how do we get credit for the sales tax that we paid on the sales or use tax return.

The above scenarios are the majority of our business. We would appreciate clarification on the above in order that we can properly report our sales and use tax obligations to the State of Illinois. Your prompt written response is greatly appreciated. The response can be emailed to me directly. I can also be reached at ###.

DEPARTMENT’S RESPONSE:

Sales Taxes

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.

Construction Contractors

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. This would include persons who install and repair garage doors. 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 he or she will permanently affix to or incorporate 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.

Resale Certificates

If a seller has nexus in Illinois, in order to document the fact that its sale to a purchaser is a sale for resale, a seller is obligated by Illinois to obtain a valid Certificate of Resale from the purchaser. See 86 Ill. Adm. Code 130.1405. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. In addition to the statement that the property is being purchased for resale, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) The purchaser's name and address;
- 3) A description of the items being purchased for resale;
- 4) Purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing; and
- 5) Registration Number, Resale Number, or a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

The Department provides a standard form for documenting sales for resale. This form can be obtained from the Department's website.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the seller's liability is at an end. If the purchaser uses that item himself or herself (*i.e.*, it was not purchased for resale), the Department will proceed against the purchaser, not the seller, provided the above stated conditions are met. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided,

could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois. The risk run by a seller in accepting such other documentation and the risk run by purchasers in providing such other documentation is that an Illinois auditor is more likely to require that more information be provided as evidence that the particular sale was, in fact, a sale for resale.

In sum, a valid resale certificate must contain all of the information required in 86 Ill. Adm. Code 130.1405. For your reference, this information is also listed above.

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,

Debra M. Boggess
Associate Counsel

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