

Persons who sell signs may incur a Retailers' Occupation Tax, Service Occupation Tax or Use Tax liability, depending upon the circumstances of the particular sale. See 86 Ill. Adm. Code 130.2155 (Tax Liability of Sign Vendors); 86 Ill. Adm. Code 140.101 (Basis and Rate of the Service Occupation Tax); 86 Ill. Adm. Code 130.1940 (Construction Contractors and Real Estate Developers) and 86 Ill. Adm. Code 130.2075 (Sales To Construction Contractors, Real Estate Developers and Speculative Builders). (This is a GIL.)

December 6, 2019

Dear XXX:

This letter is in response to your letter dated August 15, 2019, 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:

We are doing our annual update of our tax files to be sure that we are aware of any new sales/use tax issues in your state that would affect our company. Our company, COMPANY, sells custom made signage into your state where we are currently registered. The signage is either attached to a building or a pole that is concreted into the ground. We contract with an independent contractor to install the signs. The installation charges are separately stated on the billing and include charges for surveys, permits, engineering and repairs. We also contract with an independent freight carrier to deliver the sign to the site for installation. All freight charges are separately stated on the billing. Both the installation and the freight are charged to the customer at a rate higher than our companies cost.

Our questions based on the above circumstances are as follows.

- At the point of sale should we as the seller be charging the customer sales tax or is this a case where we would pay use tax?
- If this is a case of use tax, how is the use tax calculated?

- Should tax be charged on the freight?
- Should tax be charged on all components of the installation?
- If tax is charged on the freight and installation, do we charge on the selling price or only on the element of profit?
- Should tax be charged on all components of service and repair work?
- Are we obligated to collect local taxes in your state?
- If we are obligated to collect the local tax should those taxes be remitted to the state or the locality?
- Do you have any special rules or exemptions that apply to your state relating to our situation?
- Are there any special circumstances for new construction or remodeling that would cause our customers to be exempt in this situation?
- Please provide any applicable code sections that would apply to signage, installation and freight for our future reference.
- Does your state have a mass mailing list to provide us with updates when they become available? If so, will you please add us to your list or provide us with information to register for this.

We look forward to your response to our inquiries on or before October 15, 2019.

DEPARTMENT'S RESPONSE:

A person who sells signs that have commercial value (*i.e.*, value to persons other than the purchasers) incurs Retailers' Occupation Tax (sales tax) liability when making such sales, even if such signs are produced on special order for the purchaser. Examples of signs having such commercial value would be ones that spell out "real estate", "insurance," or "hamburgers," and which do not spell out the name of the purchaser nor the brand name of the purchaser's product and which are not otherwise similarly individualized. See 86 Ill. Adm. Code 130.2155 regarding vendors of signs. When a sign that has commercial value is sold and installed, the installation charge is also subject to Retailers' Occupation Tax unless there is a separate agreement for the installation charge. See 86 Ill. Adm. Code 130.450.

If the sign vendor produces a sign on special order of the customer and the sign is so specialized that it would have no commercial value to anyone other than that particular customer who placed the order, the sign vendor would not incur Retailers' Occupation Tax liability. These transactions would be subject to liability under the Service Occupation Tax Act, and the sign vendor would be considered a serviceman. See generally, 86 Ill. Adm. Code 140.101.

The above assumes that the signs remain tangible personal property after installation. If the signs were permanently affixed structurally as real estate, then there would be different tax consequences. Under Illinois law, a person who takes tangible personal property off the market and converts it into real estate is deemed a construction contractor and is the legal end-user of the

tangible personal property. The construction contractor, as the user, incurs Illinois Use Tax and local Retailers' Occupation Tax reimbursement liabilities when the tangible personal property that will be converted into real estate is purchased from registered Illinois suppliers. If such items were purchased from suppliers that did not collect the tax, the person who converts the tangible personal property into real estate is required to self-assess and remit the Use Tax to the Department based upon the cost price of the property. For information on construction contractors, see 86 Ill. Adm. Code 130.1940 and 130.2075.

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.

With respect to your question concerning freight, see, 86 Ill. Adm. Code 130.410.

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

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