

ST 20-0005-GIL 02/06/ 2020 SALE AT RETAIL

Persons who permanently affix modular homes to real estate act as construction contractors and incur Use Tax liability on their cost price of the tangible personal property they physically incorporate into real estate. See 86 Ill. Adm. Code 130.2075. (This is a GIL).

February 6, 2020

Dear Xxxx:

This letter is in response to your letter dated November 1, 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:

COMPANY [FEIN#] is requesting a legal department ruling on sales of HUD/manufactured homes into the state of Illinois. COMPANY would like sales tax clarification on the sales tax consequences of HUD/manufactured homes shipped into Illinois from outside the state.

Facts:

- COMPANY is a manufacturer of manufactured (HUD Code ~ Defined next) and modular homes.
- COMPANY defines manufactured homes as HUD homes built to the U.S. Department of Housing and Urban Development standards, labeled as HUD, built on a permanent chassis, and are sized to be at least 400 square feet.
- COMPANY is not a registered dealer in the state of Illinois.
- COMPANY may or may not be responsible/paid for the installation of the homes.
- COMPANY may or may not be responsible/paid for the delivery of the homes.
- COMPANY has no manufacturing plant within the state of Illinois.
- COMPANY currently files the ST-1 sales tax return on a monthly basis. COMPANY reports all sales of HUD and Modular homes on their monthly sales tax returns.
- COMPANY policy is to charge sales tax on HUD homes sold to Illinois customers unless the customer provides a resale/tax exemption certificate that contains a valid Illinois sales tax account.

Questions:

1. Should COMPANY collect sales tax on HUD home sales being shipped into Illinois when COMPANY is responsible for the delivery but not installation/set and no resale/exemption certificate is provided? While consulting the Illinois Taxpayer Assistance Line on the correct sales tax rate on sales into COUNTY 1, COMPANY was informed that sales tax should not be collected on these HUD homes. This guidance contradicted previous guidance from Illinois Taxpayer Assistance. The previous guidance indicated COMPANY could collect sales tax on HUD home sales into Illinois and the only local taxes COMPANY should collect were for COUNTY 1, COUNTY 2, COUNTY 3, COUNTY 4, COUNTY 5. and COUNTY 6.
2. If COMPANY **is required** to collect sales tax on these HUD sales because no resale certificate was received from our customer, what sales tax rate(s) should be charged on these sales aside from the 6.25% state rate? What local tax rates are applicable? Home Rule? RTA?
3. Are COMPANY's HUD homes considered "Mobile Homes" as defined by Illinois and therefore taxed as "Titled items" that are not reported on the normal sales tax return [ST-1] but should be reported on Forms ST-556 or ST-556-LSE? Is COMPANY or our customer required to register to file the ST-556/ST556-LSE returns if the tax must be submitted via these forms? The answer to this question may change the applicable sales tax rate as well since the sales tax rate based upon research would be different for "Titled items." Therefore, please verify the sales tax rates that would be applicable as requested in question #2 if the HUD homes are considered "Titled items"
4. If COMPANY **is not required** to charge sales tax on HUD home sales since they are categorized as "Mobile homes" and therefore "Titled items", is COMPANY still required to collect a resale certificate from our customers if no sales or sales tax is to be reported on COMPANY's [ST-1] sales tax return?

Attachments that were reviewed by COMPANY:

- Sales tax information from www2.illinois.gov defines "Titled items' tax treatment.
- STS-76 Information Guide
- For ST-556 Instructions
- Two "Tax Rate Finder" example pages showing different tax rates

If you have any questions about COMPANY's request, please contact me.

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.

In Illinois, construction contractors are deemed to be end users of building materials (including modular homes) that they take off the market and permanently affix to real estate. Contractors incur a Use Tax liability on their cost price of the materials permanently affixed to real estate. Illinois retailers making such sales also incur Retailers' Occupation Tax on the gross receipts from the sales of these building materials to the contractor. Thus, contractors having contracts with customers to sell and permanently affix modular homes incur a Use Tax liability on their cost price of materials permanently affixed to real estate. In these situations, the contractors' customers incur no tax liability, and the contractors have no authority to collect tax from them. If the contractors do not remit this tax to Illinois registered suppliers, the contractors must register, self-assess and remit the Use Tax to the Department. 86 Ill. Adm. Code 130.2075 is the Department's regulation concerning the taxation of construction contractors.

In contrast, if Illinois sellers of modular homes do not have contracts with the purchasers to permanently affix the home to real estate, they do not act as construction contractors and do not incur a Use Tax liability. Rather, they act as retailers in retail transactions and incur a Retailers' Occupation Tax liability and must collect the corresponding Use Tax from their purchasers unless an exemption applies (e.g., a sale for resale occurs if the purchaser buys the home for resale to a contractor).

Out of state sellers of modular homes who bring modular homes into Illinois and permanently affix them to real property are viewed as construction contractors. As a result, the sellers owe Illinois Use Tax on the modular homes that they permanently affix to real estate. The Use Tax liability is based upon the cost price of the items which they permanently affix to real estate. If sellers construct the modular homes, their cost price is the amount paid to their suppliers on the purchase of the modular homes. If the out of state sellers 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 which was properly due to another state. See 86 Ill. Adm. Code 150.310.

When out of state sellers of modular homes sell to purchasers or contractors without a contract to permanently affix the modular home to real estate they act as retailers, not construction contractors, and the purchasers incur a Use Tax liability. When the out of state seller itself delivers the modular home from out of state to its customer in Illinois, the seller is obligated to collect Illinois Use Tax from the purchaser and remit the tax to the Department.

The Department's regulation regarding transportation and delivery charges can be found at 86 Ill. Adm. Code 130.415 and incorporates the decision rendered in *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E.2d 926 (2009). At issue in *Kean* was whether shipping charges for certain Internet purchases of tangible personal property were subject to Illinois sales tax. The Court found in *Kean* that an "inseparable link" existed between the sale and delivery of the merchandise plaintiffs purchased from Wal-Mart's Internet store. Thus, the court concluded that the outgoing transportation and delivery charges were part of the gross receipts subject to the Retailers' Occupation Tax. 86 Ill. Adm. Code 130.415(b)(1)(B)(i). An inseparable link exists when (a) the transportation and delivery charges are not separately identified to the purchaser on the contract or invoice or (b) the transportation and delivery charges are separately identified to the purchaser on the contract or invoice, but the seller does not offer the purchaser the option to receive the property in any manner except by the payment of transportation and delivery charges added to the selling price of an item (e.g., the seller does not offer the purchaser the option to pick up the tangible personal property or the seller does not offer, or the purchaser does not qualify for, a free transportation and delivery option). 86 Ill. Adm. Code 130.415(b)(1)(B)(ii). In contrast, if the customer can purchase the tangible personal property without payment of transportation or delivery charges to the retailer, then an

inseparable link does not exist, and the delivery charges should not be included in the selling price of the tangible personal property. 86 Ill. Adm. Code 130.415(b)(1)(B)(ii)-(iii).

If the modular homes are designed to be permanently affixed to the real estate and do not have their own wheels for transportation on the highway, taxes should be reported on an ST-1.

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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