

This letter discusses sales in interstate commerce that originate in Illinois. See 86 Ill. Adm. Code 130.605. (This is a GIL.)

March 11, 2021

Dear NAME:

This letter is in response to your letter dated December 24, 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 looking for some guidance on sales/use tax issues in the following circumstances.

IL business is a distributor of range hood filters from out of state supplier and sells to restaurants as follows:

1. If sells filter to an out of state restaurant and has supplier ship filters directly to purchaser.
2. If sells filters to and [sic] IL home office that has restaurants both in state and out of state. Supplier ships filters directly to IL home office.
3. Same as number 2 above except supplier ships directly to the restaurants. Also, does it matter where the payment is made from – home office in IL vs from each restaurant location?
4. Same as all three above except has filter shipped to IL business who then ships to the various locations outside of IL.
5. If IL business is already registered in several states for sales tax and transacts business with purchases from any of those states does that matter if filters are shipped directly to purchaser from the out of state supplier.

Questions – Who is liable for what type of tax and to what state?

Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. 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.

Where tangible personal property is located in Illinois or subsequently produced in Illinois at the time of its sale, and then delivered to the purchaser in Illinois, the seller is taxable if the sale is at retail. 86 Ill. Adm. Code 130.605(a). The place at which the contract of sale or contract to sell is negotiated and executed and the place at which title to the property passes to the purchaser are immaterial. Further, the place at which the purchaser resides is also immaterial. 86 Ill. Adm. Code 130.605(a)(3).

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. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for Retailers' Occupation Tax which they are required to and do pay to the Department with respect to the same sale. If the retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

Mere possession in Illinois is considered a use. Consequently, if the purchase occurs in Illinois, the purchaser must pay the Use Tax to the retailer. Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State immediately transports the property out of this State for use outside the State. See 86 Ill. Adm. Code 130.605(a)(2). The State of Illinois has no specific exemption for purchases by foreign or domestic travelers if the property is delivered and used in Illinois. Section 130.605 identifies several exceptions to this rule, none of which appear to be applicable to the activities described in your letter.

Section 130.605(d) states that the gross receipts from such sales are not subject to tax when a sale is conducted in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery

NAME

Page 3

March 11, 2021

is actually made. Such sales are sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax.

For further information and guidance on these issues, please review Section 130.605 of Title 86 of the Illinois Administrative Code, which discusses sales of property originating in Illinois and questions of interstate commerce.

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,

Alexis K. Overstreet
Associate Counsel

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