

This letter discusses sales into foreign commerce. See 86 Ill. Adm. Code 130.605. (This is a GIL.)

July 8, 2021

Dear NAME:

This letter is in response to your e-mail dated May 26, 2021, 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 hope all is well. We have a client fact pattern that we are hoping to run by you regarding goods purchased in Illinois or delivered into Illinois for export outside of the country. Please let us know if it would be helpful to get on a quick call to discuss this further. Your thoughts in this regard are greatly appreciated.

Background

Company A operates in Illinois as a freight forwarder/export packer, managing transportation and warehousing for e-commerce international exports from the United States. Company A contracts with Company B (a non-US company) to provide Company B with freight forwarding/export packing services for goods purchased by Company B's non-US customers from US e-commerce vendors.

For example, COUNTRY Purchaser would like to purchase goods from BUSINESS in the US that BUSINESS does not ship to COUNTRY. COUNTRY Purchasers can sign up with Company B to obtain a delivery address in the US for the purpose of receiving the goods purchased from BUSINESS. Company A provides Company B with this warehouse location. COUNTRY Purchaser purchases goods in his/her name from BUSINESS and enters Company A's location in Illinois as the delivery address. Company A receives the goods, inspects the contents, and packages the goods for export to

BUSINESS

Page 2

July 8, 2021

COUNTRY. Often, many individual orders are packaged together for the purposes of export to COUNTRY. Once Company B approves the items, Company A coordinates with a common carrier to ship the goods to Company B in COUNTRY, who then delivers the items to the individual purchasers.

Neither Company A nor Company B are a party to the transaction between COUNTRY Purchaser and BUSINESS. Similarly, BUSINESS has no contractual relationship with either Company A or Company B and BUSINESS currently does not know at the time of purchase or delivery that the goods will be exported outside the US.

Question

In the above scenario, can the transaction between COUNTRY Purchaser and BUSINESS for delivery to Company A in IL prior to exportation be made exempt from tax as a sale in foreign commerce?

Our understanding is that, under Ill. Admin. Code 130.605(g), goods delivered to a freight forwarder in Illinois and then shipped to a foreign country, not to be returned to Illinois, can be purchased exempt from tax. In this scenario, what documentation should be provided to BUSINESS and/or retained by Company A to support the tax exempt status of the transaction? We are hoping that language in the terms and conditions between Company B and its customers asserting that the goods purchased will not be used in the US will be sufficient.

Please let us know if you have any further questions or are available later this week or early next for a call to discuss.

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. The tax is measured by the seller's gross receipts from such sales made in the course of such business. 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. 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 travelers where the property is delivered and used in Illinois. However, retailers who ship property

BUSINESS

Page 3

July 8, 2021

to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales. For example, the exemption would apply when a seller makes delivery in Illinois to a freight forwarder who handles the arrangements for the property to be delivered outside the United States, not to be returned to the United States. 86 Ill. Adm. Code 130.605(g). However, there is no exemption for property delivered in Illinois to foreign vessels.

The result would be different if the purchaser received or picked up the goods prior to delivery to a freight forwarder. A sale is not deemed to be in foreign commerce if the purchaser or his representative receives the physical possession of the property in this State. 86 Ill. Adm. Code 130.605(a)(1). If the property were delivered to the purchaser, or an agent of the purchaser, and not directly to the freight forwarder, then the sale would be subject to Illinois sales tax. This is so notwithstanding the fact that the purchaser may, after receiving physical possession of the property in this State, transport or send the property out of the State for use outside the State or for use in the conduct of foreign commerce.

If the sale is exempt, the seller should document the exemption by obtaining a statement from the purchaser that the property will be used exclusively outside the United States. The seller should also retain the shipping document showing physical delivery of the property to a freight forwarder in Illinois as evidence that it delivered the property directly to the international freight forwarder. See e.g. Section 130.605(f). Further, the seller should review and comply with 86 Ill. Adm. Code 130.810 - Records Required to Support Deductions. Marketplace facilitators are subject to the same duties and modes of procedure, including documenting exemptions, as all other retailers with respect to sales made over the marketplace. 86 Ill. Adm. Code 131.145(m).

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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