

This letter discusses the Service Occupation Tax. 86 Ill. Adm. Code 140.101. This is a GIL.)

January 4, 2022

Dear NAME:

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:

COMPANY, dba BUSINESS, provides outsourced pharmacy services for participating veterinary hospitals. Our human-grade institutional pharmacy is licensed in and meets or exceeds the regulatory requirements of all 50 states, and our eCommerce website is pharmacy-certified by the National Association of Boards of Pharmacy (NABP).

Any service that BUSINESS provides for the veterinary hospital occurs on a wholesale transaction basis, and all retail transactions occur between the veterinarian and the pet owner. The products ordered through our system are invoiced and charged to the pet owner separately from products or services delivered at the hospital’s physical location.

BUSINESS requests a formal letter ruling on the following questions pertaining to Title 86 Part 130 Section 130.2165 Veterinarians:

1. In our business model, which entity is responsible for remitting retail tax assessed against the pet owners – BUSINESS, or its participating hospitals?
2. Do the rules for taxing tangible personal property in excess of the stated ratio of total revenue apply to our business model?

If you have further questions please contact me at PHONE NUMBER or [E-MAIL ADDRESS](mailto:). I look forward to your decision soon.

DEPARTMENT'S RESPONSE:

Retailers' Occupation Tax and Use Tax

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 35 ILCS 120/2; 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 35 ILCS 105/3; 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 retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

Service Occupation Tax

Retailers' Occupation Tax and Use Tax do not apply to sales of service. 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. The transfer of tangible personal property to service customers may result in either Service Occupation Tax liability or Use Tax liability for servicemen, depending upon which tax base they choose to calculate their liability.

Servicemen may calculate their tax base in one of four ways: (1) separately-stated selling price of tangible personal property transferred incident to service; (2) 50% of the serviceman's entire bill; (3) Service Occupation Tax on the serviceman's cost price if the serviceman is a registered de minimis serviceman; or (4) Use Tax on the serviceman's cost price if the serviceman is de minimis and is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be

transferred as a part of sales of service. They are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit tax to the Department by filing returns and do not pay tax to their suppliers. They provide suppliers with Certificates of Resale for the tangible personal property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess, and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

Veterinarians

In conducting a veterinary practice, veterinarians may incur different types of tax, depending upon the nature of their activities. When licensed veterinarians transfer tangible personal property to their clients as a result of the practice of veterinary medicine, a service transaction occurs that results in liability under the Service Occupation Tax Act. Veterinarians also sometimes sell items of tangible personal property to clients or even to the public outside the scope of a service transaction. In such cases, they are considered retailers engaged in the business of selling tangible personal property at retail and incur Retailers' Occupation Tax liability. 86 Ill. Adm. Code 130.2165(b).

Retailers' Occupation Tax liability will be incurred on the sale of any tangible personal property to persons with whom the veterinarian has not established a valid veterinarian-client-patient relationship (VCPR) in accordance with the Veterinary Medicine and Surgery Practice Act of 2004 (the Act). 225 ILCS 115. Such items may be medicinal (e.g., a flea and tick product for application on an animal) or non-medicinal (e.g., nonmedicated shampoos, combs, leashes, collars). Under the Act, to maintain a valid VCPR, a veterinarian must maintain sufficient knowledge of the animal to initiate treatment and be readily available for follow-up.

If the Company does not have a valid VCPR with any of its customers, it would not qualify as a serviceman on this basis.

Resale

When an Illinois retailer sells tangible personal property and delivers it in Illinois, sales tax is due unless an exemption can be documented. The resale exemption is applicable when making sales to a purchaser who will in turn sell the tangible personal property. For general information regarding resale certificates, the Department's regulation for resale certificates, "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale," is found at 86 Ill. Adm. Code 130.1405. If an electronic resale certificate is kept, it should contain all of the information required under 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. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. In addition to the statement, 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 Certification of Resale to out-of-State Purchaser.

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 companies in accepting such a certification and the risk run by purchasers in providing such a certification is that an Illinois auditor is more likely to go behind a certificate of resale that does not contain a signature and require that more information be provided as evidence that the particular sale was, in fact, a sale for resale.

It is unclear what the exact nature of your relationships are with veterinarian hospitals and pet owners. It is also unclear how the products are billed and sold. It appears from your letter the Company makes two types of sales: 1) wholesale sales to veterinarian hospitals, who in turn sell the items at retail to customers or provide the items incident to the provision of service; and 2) sales to pet owners. If the sales to veterinarian hospitals are sales at wholesale and the veterinarian hospitals sell the items to customers at retail, the veterinarian hospitals may provide you with resale certificates and purchase the items tax free. However, if the veterinarian hospitals provide the items to their customers incident to sale of service, then the veterinarian hospitals are acting as servicemen and their tax obligation is met by one of the four methods explained above. Note that a serviceman may not provide a certificate of resale to its suppliers if it is an unregistered, de minimis serviceman who, therefore, owes Use Tax.

The Department is unable to provide any guidance on sales of items made by the Company to pet owners. The Department does not understand the exact nature of the sales made by the Company to pet owners. It is unclear whether the Company is selling the items at retail directly to the pet owners, or the Company is making sales at wholesale to veterinarian hospitals, who in turn sell the items at retail to pet owners. There is also some question whether the Company fulfills the orders on behalf of the veterinarian hospitals.

If the Company would like to receive a binding ruling, it may request private letter ruling. See 2 Ill. Adm. Code 1200.110.

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

BUSINESS
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Associate Counsel

RSW/ld