

When a construction contractor is also the manufacturer of modular components that it will incorporate into real estate, the tax base is the amount such construction contractor pays for the materials that it incorporates into such components. (See 86 Ill. Adm. Code 130.1940; 86 Ill. Adm. Code 130.2075) (This is a GIL)

October 15, 2024

NAME  
COMPANY1  
ADDRESS  
COUNTRY

Dear Mr. NAME:

This letter is in response to your letter dated July 30, 2024, 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 <https://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:

Could you please forward me a private letter ruling on whether 1. PRODUCT motor dealership would be considered real property or personal tangible property and 2. Clarification of how taxes are to be applied.

Background

COMPANY1 is the single sourced vendor for the Signage program for COMPANY2. COMPANY2 launched a new facility design for their Dealerships in 2024 that will require building new facilities or extensive demolition and renovation of their dealerships to comply with the DESIGN design iteration. During COMPANY1 review of the new facilities and new signage designs we

determined that the massive, cantilevered facades of the facilities will have significant engineering challenges if renovating existing facilities and will prove to be very difficult for Architects and General Contractors to design and implement. COMPANY1 has developed a modular system to build this portion of the facilities in a factory setting. These factory-built structures will integrate with the onsite construction to yield a completed facility meeting design specifications.

#### Relevant Details

The modular components when installed together on site will yield a completed front façade of the facility. The significant foundations for these structures are coordinated and unified by the structural engineer for the facility so that the numerous foundations are part of the new building foundations and are poured by the GC with COMPANY1 representation on site to ensure adherence to specifications and full integration. The modular system is designed to cover and light the car display pedestal areas and the customer entry. The modular components are integrated with the building envelope and unify water management from rainwater into a single drainage system. Similarly, the lighting of the structure is integrated with the interior lighting systems. The prefabricated building components are flashed with the building panel systems, the same as site-built components. The modular structure if ever removed will leave portions of the building unprotected from the elements no different than removing a wall would do. The remediation would entail replication of what was removed as it is wholly part of the building's design requirements from COMPANY2. COMPANY1 modular building components are part of the building design. If removed and not replicated, the remediation would be to put wall structure to accommodate a paneling system or construction of a new wall. If not modularly built and installed on site by COMPANY1, they must be site built by the General Contractor. To be specific, removal will create a deficiency to the remaining structure causing the need for remedial action. Also the removed structure would not be in a usable state for another location.

I have attached artwork and technical drawings demonstrating how this PRODUCT are [sic] manufactured and installed, that may help with the understanding of what the blue stage are [sic] and whether they [sic] should be considered real property or personal tangible property.

COMPANY1 is manufacturing this PRODUCT and hiring 3<sup>rd</sup> party [sic] to install them for us. We are then invoicing the dealers directly for the supply, freight and install.

Issues:

1. Whether PRODUCT bolted to a foundation retain its character as “tangible personal property” embedded in the ground should be [sic] constitute “real property [sic] for Sales & Use Tax purposes?
2. What are the State and local sales & use tax consequences of the sale, installation, repair and freight of the “PRODUCT” that qualifies as **tangible personal property** to COMPANY1 and its customers?
3. What are the State and local sales & use tax consequences of the sale, installation, and repair of “PRODUCT” that qualifies as **real estate** to COMPANY1 and its customer?

**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. The Illinois Use Tax Act is imposed on the privilege of using in Illinois, tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101.

The application of these taxes to the business operations described in your letter will be determined based on whether the modular components are permanently affixed to real estate. The Department’s Administrative Rules pertaining to the taxation of construction contractors is relevant to such determination and should provide the necessary guidance.

A contract that provides for both the sale and installation of tangible personal property that is permanently affixed or incorporated into a structure is considered a construction contract. The tax liabilities of construction contractors in Illinois can be found at 86 Ill. Adm. Code 130.1940 and 130.2075. The term construction contractor includes general contractors, subcontractors, and specialized contractors such as landscape contractors. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, these contractors incur Use Tax liability for such purchases based upon their cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. When the construction contractor-installer is also the manufacturer of the finished item that it will incorporate into real estate, the tax base is what such construction contractor pays for the materials that it incorporates into the finished item. See 86 Ill. Adm. Code 130.2075(a)(2).

As discussed in these rules, any tangible personal property that a construction contractor purchases which will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If such contractor did not pay the Use Tax liability to its suppliers, the contractor must register and self-assess the Use Tax and make payment directly to the Department. If the contractors 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 that was properly due to another state. See 86 Ill. Adm. Code 150.310.

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability, and the construction contractors have no legal authority to collect the Use Tax from their customers. However, a construction contractor may pass on the amount of its Use Tax liabilities to customers in the form of higher prices or by including provisions in its contracts that require customers to “reimburse” the construction contractor for such expense. This reimbursement cannot be billed to a customer as “sales tax,” but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises its price is a business decision on the construction contractor’s part.

Section 130.1940(c) addresses situations where tangible personal property is permanently affixed or incorporated into a structure incident to a construction contract. As previously noted, a construction contractor does not incur retailers’ occupation tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures) incorporated into a structure as an integral part thereof when furnished and installed incident to a construction contract. A construction contract that provides for both the sale and installation of tangible personal property that is permanently affixed or incorporated into a structure may separately state its charges for installation and tangible personal property and remains a construction contract for sales tax purposes. The fact that such charges are separately stated in the contract or on the billing does not change the tax consequences of the transaction. Additionally, since the contractor is not acting as a retailer of tangible personal property, no tax is due on delivery charges.

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 the purchases and then contracts to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

COMPANY1/NAME

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I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

*Thomas Grudichak*

Thomas Grudichak  
Associate Counsel

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