

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140. (This is a GIL.)

July 24, 2025

NAME
COMPANY
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your letter received April 11, 2025, 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:

We are requesting a General Information Letter on behalf of one of our clients regarding the taxability of their sales and services. The taxpayer is a commercial direct mail printing company located in Illinois that prints flyers, letters, brochures, catalogs, inserts, order forms, privacy statements and more. Along with printing, the taxpayer also provides direct mailing services. This service includes the printing, packaging and mailing of customized print products to customers in Illinois and also out of state. All items printed are individualized and only usable by the customer requesting the print.

The Taxpayer would like to confirm that their current process of remitting tax is the correct approach. The taxpayer prints, addresses, and, under the direction of the customer, mails the items to recipients. In this situation the taxpayer is charging and remitting service use tax on 100% of the invoice. In another situation the taxpayer prints the order as received from the customer

and ships the order to a mail house in IL. The taxpayer is told by the customer what percent of the mailings are being delivered to IL addresses and only charges retailers' occupation tax on that percent of the items.

Taxpayer is requesting a ruling to clarify which transactions should be imposed retailers' occupation tax and which transactions should be imposed service occupation use tax. Could you please advise on the following questions:

- If the taxpayer is printing items and directly mailing to recipients at the direction of a customer, would the entire project be subject to service use tax?
- If the taxpayer is printing and shipping items to a mail house and is informed by the customer how many items are being delivered to IL residents, would only the portion shipped to IL residents be subject to retailers' occupation tax?
- If the taxpayer has transactions of purely packaging and mailing services, would they be subject to service use tax?

Our understanding is that the taxpayer should charge and remit service use tax on transactions of direct packaging and mailing services. Direct packaging and mail services are not explicitly defined in the Illinois Administrative code. In the Illinois General Information Letter ST 04-0200-GIL, the department's response discusses the ability for the serviceman to retain the ability to exercise control over the shipment as what will determine their liability for use tax. Because the customer does not lose control over the tangible personal property, the service is taxable.

On transactions where the customer provides a mailing list and instructs the taxpayer to print, address, and mail items on the customer's behalf, we believe the case of *Deere & Co. v. Allphin* applies, and the taxpayer should be charging and remitting IL retailers' occupation tax on the full price of the job.

Deere & Co. v. Allphin concerned advertising brochures and other printed material the taxpayer purchased from a commercial printer in Illinois. The printer, at the request of Deere, delivered the material to a mailing company also located in Illinois where the printed materials were placed in envelopes, addressed, sorted and mailed to dealers and customers of Deere. The court held that advertising brochures mailed out of state by an agent of the taxpayer was subject to the Illinois service use tax because the taxpayer through an agent exercised power incidental to ownership over the brochures prior to their being placed in the stream of interstate commerce when Deere furnished

mailing lists to the agent and directed the agent to address them. The brochures did not begin their journey into interstate commerce until they were delivered to the post office.²⁸⁰²

Deere & Co. v. Allphin, 364 N.E.2d 117 (Ill. App. Ct. 1977).

Transactions where the taxpayer receives an order from the customer for print, ship the order to a mail house in IL, and are informed what percent of the prints are being delivered to IL recipients, require the taxpayer to charge and remit retailers' occupation tax on the percent of the order that is being shipped to IL recipients. In this case, we believe Ill. Admin. Code tit. 86, § 130.2160(a)(1) applies.

Per Ill. Admin. Code tit. 86, § 130.2160(a)(1)

Persons engaged in the business of selling tangible personal property to purchasers who give such property away for advertising or for any other reason, apart from their sale of other tangible personal property or service, are engaged in the business of selling tangible personal property at retail and are liable for Retailers' Occupation Tax when making such sales.

We look forward to your guidance on these tax matters. If you have any questions or need any additional information regarding the situations in this letter, you may contact me by email at EMAIL. Thank you in advance for your consideration in this matter.

DEPARTMENT'S RESPONSE:

Retailers' Occupation 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 and Use Taxes do not apply to sales of service. The Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If the transactions you are inquiring about do not involve the transfer of any tangible personal property, then they generally would not be subject to Service Occupation Tax or Service Use Tax. For general information, see 86 Ill. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

A serviceman's liability may be calculated 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 he is a registered de minimis serviceman; or, 4) Use Tax on the serviceman's cost price if he is a de minimis serviceman 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 the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the serviceman's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106. These methods result in the customer incurring a Service Use Tax liability. See 86 Ill. Adm. Code 160.101.

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. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred incident to the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production).

The cost ratio is a measure of the amount of tangible personal property transferred with a service. It is calculated by comparing the serviceman's product cost to his total income from services. The cost of materials that are not transferred to customers incident to a service, such as those sold at retail, removed from inventory for use, or incorporated into repairs of real estate, must be excluded when determining the cost ratio. See 86 Ill. Adm. Code 140.105(c).

Servicemen do not have the option of determining whether they are de minimis on a transaction-by-transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. This method also results in the customer incurring a Service Use Tax liability.

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. 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. These 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. Under this method the customer incurs no Service Tax liability.

Multi-Service Transaction – Secondary Servicemen

Multi-service situations exist when a primary serviceman subcontracts work to a secondary serviceman. See 86 Ill. Adm. Code 140.145. A primary serviceman engages the services of a secondary serviceman in order to obtain part or all of the products and services desired by the service customer. The point at which Service Occupation Tax or Use Tax will be incurred depends upon whether the primary and secondary servicemen are registered or de minimis. In multi-service situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman, or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. 86 Ill. Adm. Code 140.301(a).

When both primary servicemen and secondary servicemen are registered, primary servicemen provide secondary servicemen with a Certificate of Resale. A primary serviceman would then incur Service Occupation Tax based upon the separately stated selling price of the property or 50% of the bill to the service customers. If the primary serviceman is registered and de minimis (that is, under the 35% threshold, or 75% for pharmacists and printers), the primary serviceman may choose to remit Service Occupation Tax to the Department based upon the cost price of tangible personal property purchased from the secondary serviceman. If the cost price of the tangible personal property is not separately stated by the secondary serviceman, the cost price will be deemed to be 50% of the total bill from the secondary serviceman. Upon selling their product, such servicemen

are required to collect the corresponding Service Use Tax from their customers. 86 Ill. Code 140.145.

If an unregistered de minimis serviceman subcontracts service work to another unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on the cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman. This certification option is only available in multi-service situations when both the primary and secondary servicemen are unregistered and de minimis. 86 Ill. Code 140.145.

Transactions involving multiple servicemen work best if both the primary and secondary servicemen are registered. This will enable both parties to utilize Certificates of Resale. If the primary serviceman is registered and the secondary serviceman is not registered, it is possible that tax will be incurred at more than one point during the course of sale of a particular item. This will occur if the unregistered secondary serviceman has paid Use Tax with respect to an item of tangible personal property, then transfers that property to a primary serviceman who will, in turn, incur a Service Occupation Tax liability when transferring the item to the service customer.

Interstate Commerce

Please note, an exemption is available for property resold as an incident to a sale of service under an agreement by which the serviceman is obligated to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to this State, provided such delivery is actually made. See 86 Ill. Adm. Code 140.501(b). Please note unregistered de minimis servicemen may also claim the interstate commerce exemption. See 86 Ill. Adm. Code 140.108(a)(2)(B). However, tangible personal property that is delivered or mailed to locations in Illinois is subject to tax. Documentation must be retained to support the exemption for each delivery of tangible personal property made in interstate commerce. If sufficient documentation is not retained for a delivery, the exemption will be denied.

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 800-732-8866.

Kind regards,

George L. Encarnacion, Jr.

COMPANY
Page 7
July 24, 2025

Associate Counsel

GLE:sce