

In order to prevent actual or likely multi-state taxation, the Use Tax does not apply to the use of tangible personal property in this State that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310. (This is a GIL.)

March 12, 2008

Dear Xxxxx:

This letter is in response to your letter dated January 8, 2007, in which you request 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:

General Information

TAXPAYER, ('Taxpayer') is a STATE S Corporation. The Taxpayer is a sign contractor that manufactures signs for out-of-state customers. The Taxpayer also has the signs installed at the out-of-state customer's location using a subcontractor. The Taxpayer contracts with and pays the subcontractor for installing the sign and then bills the customer for the sign and installation costs and collects sales tax on the transaction in accordance with the law of the state where the sign is delivered. This sales tax has been remitted to the taxing authorities in the state where the sign is installed.

Although the Taxpayer sells to out-of-state customers, the Taxpayer is treated as a real property contractor under the Florida statutes and is liable for the use tax on its fabrication costs to the state of Florida on all manufactured signs, regardless of whether they are sold in state or out of state. According to Florida Rule 12A-1.051, exterior signs that are welded or bolted, channel letters that are lighted and directly wired, or signs that are embedded in concrete foundations are classified as real property, based on the method of attachment. Therefore, even if the sign is installed in another state the

contractor, which is the Taxpayer, must pay use tax to Florida on the materials and supplies used to fabricate and install the sign.

The Taxpayer has been audited by the Florida Department of Revenue ('FLDOR') for the period October 1, 2000 through September 30, 2003. The FLDOR has taken the position that these out-of-state sales are improvements to real property and not sales of tangible personal property and that use tax is due on the fabricated cost of the signs. The Department has stated that its fabrication use tax under Section 212.06(1)(b), Florida Statutes applies to signs even though the signs are exported and installed in other states. The audit is closed and the Taxpayer has been assessed the use tax for the period October 1, 2003 through September 30, 2003. The Taxpayer has paid sales taxes to the states where the signs were installed for the same period.

Issues

The Taxpayer paid sales taxes to the states where the signs were installed. Florida law requires the Taxpayer to pay use tax on the fabricated signs which are installed in other states. The Taxpayer currently has not paid the use tax due to the state of Florida; however, the audit is closed and the Taxpayer is assessed with the use tax liability. The state of Florida also stated that it would not consider giving a credit for the sales tax paid to other states against the Florida use tax.

Florida's sales and use tax rate is 6%. Under Florida law Section 212.06(7) and Rule 12A-1.091(3), credit is provided in Florida for a like tax paid in another state for the use or consumption of services, or the use, consumption, distribution, or storage of tangible personal property in Florida up to the amount of tax imposed in Florida. The dealer must pay the Florida Department of Revenue the difference between the tax imposed by Florida and any lesser tax imposed in the other state.

The purpose of this request is to obtain an opinion from your state regarding the following items:

Is a similar credit or refund available in your state for the taxes paid or to be paid to the state of Florida? Please cite specific provisions of your state law allowing the credit for the use tax paid to other state.

Does your state require actual payment of the use tax to the state of Florida or will you allow the credit based on the audit assessment issued by the state of Florida?

What is a procedure to obtain the credit for the use tax paid to Florida?

What is the oldest period for which a credit/refund request can be made?

If the Taxpayer is applying for a credit/refund for more than one filing period, can one claim be made?

Anything you can do to expedite this request will be greatly appreciated. The following is some additional information about the Taxpayer you may see helpful in answering this request. Please feel free to call or email me if you have any questions or need additional information. Thanks for your help in this matter.

Products

The Taxpayer manufactures six distinct signage products: channel letters, back-lit letters, pylon signs, monument signs, and electronic display systems, and banners. In addition, the Taxpayer offers total customer packages which include an array of signage products custom tailored to meet the demands of a diverse range of businesses.

Channel Letters are individually illuminated letters and graphics. These letters are found everywhere, from shopping malls to exterior storefront identification. There are three types of channel letters:

- ° The most common type is Standard Channel Letters. These letters are made up of a U-channel base, with colored Plexiglas faces.
- ° Reverse Channel Letters are have [sic] metal faces and returns (sides of letters) and have a clear plastic backing. These letters are designed to be mounted an inch or two away from the wall. At night, these letters create a halo-lit effect.
- ° The third type of Channel Letters are ones with 'open' faces. Though not actually open, the faces of these letters are clear plastic with the balance of the letters built just like Standard Channel Letters. This allows for the raw neon to be seen, as well as the inside of the U-channel letterform itself. Open Face Channel Letters are very effective for aggressively grabbing attention.

Back-Lit Letters are individual letters and graphics that are illuminated from a source that is located behind the letters. The usage of back lighting creates a halo effect around the letters and adds increased visibility and attractiveness.

Pylon signs are an effective way to provide advance notice of the location of a business or to feature a business name or logo. It is very common to see pylon signs on or near main streets. Manufactured of aluminum & steel, the structures are made for long term usage. With signage, as with many other business investments, initial cost may not reflect long term value. A properly designed sign can effectively communicate for many years.

Monument signs are free-standing signs constructed on the ground with a continuous footing or foundation and a base at grade level. Most communities have tight restrictions on the specifications for monument signs, making it imperative to engage knowledgeable professionals in the manufacturing and installation of monument signage. The Taxpayer has the knowledge and experience necessary to ensure proper compliance for every company's monument signage needs.

Electronic display systems utilize digital media to display information. The use of electronic display systems has rapidly increased due to their ability to display information rapidly, fluidly and in a more esthetically pleasing manner. Electronic displays are often utilized by companies needing to communicate large amounts of information, such as airports, bus terminals, and stadiums. However, their use has also increased rapidly in mainstream commerce. Despite a larger initial cost, electronic displays have an exceptional ROI based on their programmability and adaptability.

Banners are temporary signs until the actual sign is manufactured.

Window Graphics are vinyl signs applied inside the windows or on the doors [sic] vinyl that are used to tell store hours and emergency contact information.

Services

The Taxpayer performs design and engineering services. The marketing design department provides clients with creative artwork concepts. To ensure the highest quality of the products the Taxpayer completes inspections regularly during each stage of production, crating and shipping. In addition, as a product exits one phase of production and enters another, it must pass through a signoff inspection procedure. These methods greatly aid the staff in producing the finest possible sign products. As with all of the Taxpayer's other clients, the Taxpayer proactively works toward installation not in terms of store turnover or store opening, but in the context of each individual store's time schedule. The Taxpayer has established relationships with a network of more than 200 licensed sub-contractors designated to complete quality installations throughout the country. Within this subset, the Taxpayer has meticulously established a list of preferred sub-contractors designated to complete installations solely for the Taxpayer. The Company's relationships with these sub-contractors allows them to offer superior installation services to their client base while focusing management and personnel attention to our core competency of sign design and manufacturing. The Taxpayer's nationwide maintenance network can respond to most signage issues within 72 hours, ensuring that your signs are properly maintained as quickly as possible. Also, each project nationwide will be assigned a *single contract* with the Taxpayer to help eliminate any questions.

DEPARTMENT'S RESPONSE:

Many of the issues you raise are similar to the issues you raised in your letter to the Illinois Department of Revenue dated January 8, 2007, and responded to by the Department by letter dated March 12, 2008.

The Use Tax Act provides that in order to prevent actual or likely multi-state taxation, the Use Tax does not apply to the use of tangible personal property in this State of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310(a)(3). In addition, depreciation is allowed for out-of-State use. See 86 Ill. Adm. Code 150.110. See 86 Ill. Adm. Code 130.1501 regarding claims for credit filed with the Department.

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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:mzk