

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

April 18, 2008

Dear Xxxxx:

This letter is in response to your letter dated August 21, 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:

I am writing you on the advice of the Taxpayer Assistance Desk because I wanted their response, quoted below, in writing. They explained that though they give answers verbally, and, in fact had answered my question, written responses have to come from Legal Services by written request.

The question was: 'What documentation does a reseller need to waive the collection of sales tax from a for-profit entity that is providing services to Medicaid and Medicare recipients, such as a nursing home?'

Nursing Homes (and similar entities) do not pay tax on certain products purchased for the use of Medicaid and Medicare patients but only to the percentage of such patients in their total patient mix (e.g., 80% Medicaid, 10% Medicare, 10% private pay). Since this usually fluctuates, the seller cannot compute the tax for each sale. Instead, facilities with sufficiently large numbers of such patients may elect to pay no sales tax to their vendors and to do their own report to IDOR showing the patient mix and computing and paying the tax based on that mix. When this was started, years ago (and I understand, still today) facilities were given a Use Tax number by IDOR, under which they itemized and filed their return and tax.

Taxpayer Assistance reviewed ST 1995-0211 (5-23-95) and related information and concluded that the most appropriate application is the one that is in general, perhaps

universal, use. (i.e., a facility obtains a Use Tax number from IDOR, provides that number to the vendor to preclude being taxed on a purchase, files its' [sic] own use tax report and pays the tax on the appropriate portion of all purchases (similar to the Service Occupation Tax process). The vendor uses that use tax number as it does a non-profit number to account for non-taxable sales.

Taxpayer Assistance explained that the alternative possibility - for the facility to obtain a Service Occupation Tax number and use a CRT61 (to vendor) - would not work for the facility and would, therefore, be inappropriate, since the facility is not a retailer as envisioned by the Service Occupation Tax. It is not a retailer selling product but rather a service provider, providing all products and services in an all inclusive, general care per diem rate (some of which is taxable and some of which is not, even on the Medicare and Medicaid patients). The facility does not charge and cannot report collected tax for such items as required under the Service Occupation Tax. It can only do that effectively under the Use Tax format, which is undoubtedly why IDOR originally determined to issue such facilities Use Tax numbers rather than classifying them as Service Occupation Tax entities.

I am requesting written confirmation of the instruction of Taxpayer Assistance.

As you see, this is not a random question, it specifically relates to ongoing practice. Consequently, an early reply would be greatly appreciated...for which I thank you in advance.

DEPARTMENT'S RESPONSE:

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For general information regarding sales of service and Service Occupation Tax, see 86 Ill. Adm. Code 140.101 through 140.109.

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. Tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The serviceman's liability may be calculated in one of four ways:

- (1) Service Occupation Tax on the separately stated selling price of tangible personal property transferred incident to service;
- (2) Service Occupation Tax on 50% of the serviceman's entire bill;
- (3) Service Occupation Tax on the servicemen's cost price if the serviceman is 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 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 (the second method described above). Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

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 as an incident of 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 graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using 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. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The fourth 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. 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.

Under the fourth method, the de minimis serviceman incurring Use Tax liability is considered to be the end user of the tangible personal property transferred to service customers. In this situation, the de minimis serviceman's customer incurs no tax liability, since the customer is not the "user" of the tangible personal property transferred to him by the serviceman. Although liability rests with a serviceman, the Department has determined that a de minimis serviceman incurring a Use Tax liability may claim exemptions predicated upon either the exempt status of his customer or upon exemptions claimed by his customer based on nontaxable uses of the tangible personal property transferred by the serviceman.

A customer's status as an exempt entity may "flow through" to a de minimis serviceman. The Department has determined that a de minimis serviceman is relieved of his Use Tax liability when making sales of service to customers who have obtained exemption identification numbers ("E" numbers) from the Department. The customer must provide its "E" number to the de minimis serviceman in order to relieve the de minimis serviceman of Use Tax liability on the purchase of tangible personal property being transferred to that customer. In the situation where there are both taxable and exempt purchases, the serviceman will notify the supplier the percentage of purchases that are exempt. The serviceman utilizing this flow through may either present the customer's "E" number to his supplier in advance when making the purchase of tangible personal property that will be transferred to the customer or, if tax was paid to the supplier, present it to his supplier along with a request that the supplier submit a claim for credit to the Department. Such a claim may also be filed by the de minimis serviceman if he has previously self-assessed the Use Tax on that item to the Department.

The regulations adopted in 86 Ill. Adm. Code 140 supersede ST 95-0211. A nursing home may follow the procedures set out in Section 140.108 regarding purchases of tangible personal property that are being transferred to "E" number holders, provided the requirements of Section 140.108 are met. For purchases involving the transfer of tangible personal property in non-exempt transactions, a nursing home must either (1) register as a serviceman under the Service Occupation Tax Act and provide a certificate of resale to its suppliers and pay Service Occupation Tax under methods 1 through 3 described above, or (2) pay the Use Tax to its suppliers who are registered to remit Illinois tax and self assess Use Tax on purchases from suppliers who are not registered to remit tax to the Department. A de minimis serviceman who has registered with the Department only for the limited purpose of self assessing Use Tax is prohibited from using that registration number with suppliers to avoid paying tax on taxable purchases or to document exempt purchases.

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,

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