

This letter discusses the taxation of maintenance agreements on extended warranties. (This is a GIL.)

October 17, 2008

Dear Xxxxx:

This letter is in response to your letter dated July 14, 2008, 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:

On April 23 2008, you sent a letter to INDIVIDUAL. INDIVIDUAL is no longer with BUSINESS.

In reviewing your 'GIL' response, I had an additional question. We are aware of the fact that we are responsible for paying a use tax for all parts and supplies used in our maintenance contracts. What we were looking for was a way to pass that tax on to our customers. Is there a way under Illinois law for us to charge our customers tax on the parts and supplies used during the maintenance period?

I would appreciate any help you can provide.

DEPARTMENT'S RESPONSE:

As pointed out in the Department's response to your previous GIL request, generally, a maintenance agreement or extended warranty that is not included as part of the selling price of tangible personal property, but is sold as a separate agreement for a predetermined fee, is not subject to tax. The serviceman that provides service under the separate maintenance agreement or extended warranty is required to pay tax to his supplier on the cost price of the tangible personal property that is transferred incident to the completion of the maintenance agreement. See 86 Ill. Adm. Code 140.301(b)(3). The purchaser of the separate agreement or warranty is not charged tax on the

labor or tangible personal property that is transferred incident to the completion of the maintenance agreement. The tax consequences do not change whether the separate agreement is sold at the time of the sale of the equipment or at a later date.

Persons subject to these taxes may seek to be reimbursed for their liability by separately stating these taxes to their customers, as a reimbursement tax. Please be certain, however, that if this "reimbursement" charge appears on the invoice to the customer, that it is called "reimbursement" and NOT "tax." This distinction is important, because the legal incidence of the Use Tax liability does not fall upon the customer. This would be a separate contractual arrangement between the person subject to the tax and the customer. If a customer refuses to pay the reimbursement, the only remedy for the seller is to bring a lawsuit against the customer for these amounts.

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,

Debra M. Boggess
Associate Counsel

DMB:msk