

Illinois retail sales are made by persons who either accept purchase orders in the State or maintain an inventory in Illinois and fill Illinois orders from that inventory. The Illinois retailer is then liable for Retailers' Occupation Tax on gross receipts of sales including any applicable local occupation tax. See 86 Ill. Adm. Code 270.115(b). (This is a GIL).

December 17, 2008

Dear Xxxxx:

This letter is in response to your undated letter 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 in regard to try to clear up some confusion on the sales tax that should be charged to customers. A local private corporation, in order to save customers money, is billing them as out-of-state customers so they do not have to pay sales tax. These customers have CITY mailing addresses and do business in CITY, the same town as the private corporation. My understanding is that anybody who lives within the state and makes a purchase within the state is compelled to pay sales tax. This business has an undue advantage by not charging sales tax, and thus it increases their profit margins. My concerns are, can I bill local people as out-of-state customers so I can save sales tax? Please let me know if I can do this. I am enclosing several invoices from the CITY Center, the private corporation I mentioned, that shows how they are billing local customers as out-of-state businesses to save the customers money. I believe their total sales are in excess of \$100,000 dollars a year. If this is an acceptable technique, please let me know so that I quit charging my customers sales tax and save them money. I have enclosed a few examples how they are circumventing charging sales tax.

DEPARTMENT'S RESPONSE:

Illinois retail sales are made by persons who either accept purchase orders in the State or maintain an inventory in Illinois and fill Illinois orders from that inventory. The Illinois retailer is then liable for Retailers' Occupation Tax on gross receipts of sales and must collect the corresponding Use

Tax incurred by purchasers. However, if both the locations of the property being purchased and the purchase order acceptance were outside of the State of Illinois, then such sales would only be subject to Illinois Use Tax at the rate of 6.25%.

In general, the imposition of the various local sales taxes in Illinois is triggered when “selling” occurs in a jurisdiction imposing a tax. The Department’s opinion is that the most important element of selling is the seller’s acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115(b). The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions, the local tax will be incurred.

If a purchase order is accepted outside the State of Illinois, but the property being sold is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes.

When tangible personal property is located in this State at the time of its sale (or is subsequently produced in this State) and then is delivered in this State to purchasers, the gross receipts from such sales are subject to tax if the sales are at retail. See subsection (a) of 86 Ill. Adm. Code 130.605. However, subsection (c) of Section 130.60 provides that gross receipts are not subject to tax when the gross receipts are from sales in which sellers are obligated, under the terms of their agreements with the purchasers, to make physical delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made. In addition, subsection (d) of Section 130.605 provides that gross receipts are not subject to tax when the gross receipts are from sales in which the sellers, by carriers (when the carriers are not also the purchasers) or by mail, under the terms of their agreements with the purchasers, deliver the goods from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made.

Please note that sales are taxable even though purchasers that receive physical possession of the property in this State transport or send the property out of this State for use outside the State or for use in the conduct of interstate commerce. See subsection (a)(2) of Section 130.605. The Department considers common carriers that are contracted for by purchasers to be representatives of those purchasers. If those common carriers receive physical possession of the property in this State, the sales of such property are subject to tax.

I hope this information is helpful. We are also referring your inquiry to our Audit Division. Please be advised, however, that we cannot release confidential taxpayer information regarding an audit or investigation by the Department. 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.

Very truly yours,

Debra M. Boggess
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