

This letter discusses the Department's regulation for sales of containers, wrapping and packing materials and related products as set forth at 86 Ill. Adm. Code 130.2070. It also discusses sales in interstate commerce. See 86 Ill. Adm. Code 130.605(a)(1) and (2). (This is a GIL.)

July 11, 2006

Dear Xxxxx:

This letter is in response to your letter dated March 22, 2006, 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.ILTAX.com 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 behalf of our client, Company A, we hereby request a ruling regarding whether Illinois sales or use tax is due in connection with Company A's purchase and distribution of Special Packs and Display Cases. All relevant facts regarding these transactions are outlined below.

FACTS - SPECIAL PACKS

Company A manufactures and sells confectionery products to customers, located within and outside of Illinois, who engage in the retail sale of such products. Company A sells individually wrapped, open-stock product which is shipped to customers, in 'Special Packs.' Special Packs are plastic or corrugated product containers, imprinted with brand advertising, that also serve as point-of-sale display units for use at Company A's customer's retail locations, such as grocery stores. They include end-of-aisle and in-aisle displays, counter units located near cash registers, and cardboard drums.

Company A acquires Special Packs via the issuance of purchase orders to co-packers located in Illinois who manufacture/assemble the Special Packs according to Company A's specifications. Company A's finished product is shipped to the co-packers who fill the Special Packs with the product, seal the Special Packs, and ship the Special Packs on non-returnable pallets to Company A's distribution center, located in Illinois and

operated by a third-party. Title to the Special Packs transfers to Company A upon arrival at the Illinois distribution center.

Co-packers invoice Company A for labor and materials associated with fabricating the Special Packs, labor associated with filling the Special Packs with Company A's product, packing, sealing and shipping the Special Packs, and artwork. The co-packers also charge Company A for the non-returnable pallets that are shipped with the Special Packs.

Special Packs, which contain Company A's product, are assigned SKU numbers. These SKU numbers are different from those assigned to individually-wrapped open stock product, i.e., those sold without the Special Packs.

The Illinois distribution center ships Special Packs via common carrier to Company A's customers located throughout the United States. Title passes to Company A's customers at the point of destination.

Special Packs serve as display units at retailer locations from which the product is sold to customers. The Special Packs are not returned to Company A and discarded by Company A's customers.

Company A invoices its customers for the product only and does not separately charge for the Special Packs. The list price of a quantity of product contained in a Special Pack is the same as the list price of a quantity of product that is not sold in a Special Pack.

FACTS - DISPLAY CASES

Company A also contracts with Illinois co-packers for the fabrication of disposable corrugated or plastic Display Cases. As with the Special Packs, these Display Cases accompany the product that is ultimately sold to Company A's customers. Unlike the Special Packs, these cases do not actually contain product as it is shipped to Company A's customers. All other facts relating to this issue are identical to the facts described above for Special Packs.

REQUEST FOR RULING

With regard to the foregoing discussion, we respectfully request a ruling on the following issues:

- 1) Does Company A owe Illinois use tax on Special Packs distributed to its customers in Illinois? If so, would the taxable basis include separately-stated co-packer charges for non-returnable pallets and any other packaging supplies used to ship the Special Packs and product to Company A's customers?
- 2) Does Company A owe Illinois use tax on its cost for Display Cases distributed, as part of the sale of product, to its customers in Illinois? If so, would the taxable basis include separately-stated charges from co-packers for boxes, box sealing materials, and non-returnable pallets that contain and support the product and Display Cases as they are shipped to Company A's customers?

- 3) Does Company A owe Illinois sales or use tax on the cost of Special Packs and/or Display Cases that are ultimately shipped from Company A's distribution center to customers outside of Illinois?

Thank you for your assistance with this matter. Please contact me if you have any questions or if you require any additional information.

DEPARTMENT'S RESPONSE

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. When Illinois retailers sell tangible personal property to customers for a particular dollar amount, they have made sales subject to the Retailers' Occupation Tax. Retailers must pay Retailers' Occupation Tax to the Department based upon their gross receipts, or actual amount received, from the sales of the tangible personal property.

Section 3 of the Illinois Use Tax Act, 35 ILCS 105/3, imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. As stated above, Retailers' Occupation Tax is imposed upon gross receipts of sellers and the tax acts contain provisions that require the retailer to collect the complementary Use Tax from the customer. This in effect reimburses the retailer for his Retailers' Occupation Tax liability. When a retailer purchases consumable supply items from vendors who do not collect Illinois tax, the purchaser should self assess the Use Tax and remit it directly to the Illinois Department of Revenue.

The Department's regulation governing "Sales of Containers, Wrapping and Packing Materials and Related Products," is set forth at 86 Ill. Adm. Code 130.2070. The sale of tangible personal property for the purpose of resale is not taxable so long as the purchaser provides the seller with a Certificate of Resale in accordance with 86 Ill. Adm. Code 130.1405. Please note that sellers of containers to purchasers who sell tangible personal property contained in such containers to others are deemed to make sales of such containers to purchasers for purposes of resale, the receipts from which sales are not subject to the Retailers' Occupation Tax, if the purchasers of such containers transfer the ownership of the containers to their customers together with the ownership of the tangible personal property contained in such containers. The regulation also discusses sales for use or consumption.

For general information, please refer to 86 Ill. Adm. Code 130.605 regarding sales of property originating in Illinois. Subpart (c) of this regulation states that Retailer's Occupation Tax does not apply where sellers ship goods by carrier or by mail, according to the terms of agreements with purchasers, and the seller delivers the goods from a point within Illinois to a point outside Illinois and the goods are not to be returned to Illinois. Such sales are considered to be sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax.

However, sales are not deemed to be in interstate commerce if the purchaser or his representative receives the physical possession of the property in Illinois, even if such property is immediately transported outside of Illinois. See 86 Ill. Adm. Code 130.605(a)(1) and (2).

If you require additional information, please visit our website at www.ILTAX.com 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,

Martha P. Mote
Associate Counsel

MPM:msk