

This letter provides general information about how to tax various types of sales related to sales of wheels and wheel repair. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

August 22, 2006

Dear Xxxxx:

This letter is in response to your letter dated May 16, 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](http://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:

Please find enclosed many questions my company has regarding the correct way to tax for our business. I want to make sure that we are taxing our customers correctly. These questions came from my STATE office so some of the information might not apply to Illinois, so please let me know what we need to change for our IL CITY location.

Please mail or fax the answers to the above address or fax number. You can also email the answers to me

Thank you in advance for your help with this matter.

Your questions are as follows:

We are a wheel repair company, we fix alloy wheels and also stock wheels in inventory for retail & wholesale purchases. We want to make sure that we are taxing correctly. Here is a list of services and what we tax and what we don't tax:

Wheel Repair - wholesale or retail repairs to wheels with the same wheels being returned to the customers. Not taxable.

Wheel Exchange - Exchanging a customer's wheel with a finished wheel we have in our own inventory and keeping their wheel to replenish our inventory. Taxable

Inventory Wheel Sale - Sell a wheel direct from our inventory with no exchange wheel to replenish our inventory. Taxable

Wheel Sale/Outside Sources - Sell Wheels to a customer that we have transferred in from an outside source, either our stores or other wheel companies. Taxable.

Wheel Repair Supplies - Supplies and materials that we use to repair a customer wheel. Taxable.

Mounting and Balancing of Tires. Labor of installing a tire on a wheel for a customer. Not taxable. (We do not charge our customers for materials, i.e., valve stems and weights needed for this process but we do pay tax on these supplies from our vendor.)

Tire disposal - Fee we charge customer to dispose of their old bad tires that they don't want returned with their wheels. Taxable. (We also pay tax to the tire disposal company that disposes of these tires for us.)

Shipping and Handling fee - Charge this to retail customers only to package and ship their wheel back to them. Taxable.

Cod Charge - Charge to have UPS collect on the package being delivered. Taxable.

Tire Sales - New tire sales to retail and wholesale customers. Taxable.

Removal and Installation of Wheels on to customers vehicles. - Labor only no materials involved. Not Taxable.

Core Charges - An additional fee we add to our wheel sale if a retail or wholesale company does not have a wheel to exchange to replenish our inventory. Taxable.

Also note we do not charge Sales Tax to out of state customers.

## **DEPARTMENT'S RESPONSE**

We hope that the following information will provide background information that is useful for answering your questions.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. See 35 ILCS 120/2. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 35 ILCS 105/3.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Personal services that do not involve the transfer of tangible personal property are not subject to sales tax. However, under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we refer you to the Department's regulation at 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

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. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

The kinds of sales and services described in your letter are taxed under the Retailers' Occupation Tax Act or the Service Occupation Tax Act depending upon the relationship between the parties. The nature of the relationship usually depends upon the agreement between the two parties. However, the actual transaction occurring between the parties may also determine how the service or sale is taxed. Generally, how a repairman's sales are taxed depends on whether or not he or she has agreed to send the customer's actual equipment or components back to that customer.

Generally, if a repairman has not agreed to send the customer's equipment or components back to that specific customer, and if the repairman rebuilds, repairs, or reconditions a piece of equipment or component that belongs to him and sells that equipment or component to a different customer as a recycled or reconditioned piece of equipment or component, the repairman is acting as a retailer and is subject to Retailers' Occupation Tax liability. Therefore Retailers' Occupation Tax and

Use Tax liability would be incurred on 100% of the charge for the equipment. See the Department's regulation "Persons Who Repair or Otherwise Service Tangible Personal Property" at 86 Ill. Adm. Code 130.2015.

On the other hand, if a repairman (serviceman) has agreed to send the customer's equipment or component back to that specific customer, the repairman is not acting as a retailer but instead is acting as a serviceman repairing and reconditioning that customer's equipment or components of that equipment. Consequently, the serviceman would incur Service Occupation Tax or Use Tax liability depending on how the serviceman calculates his tax base.

Tire disposal: Pursuant to 415 ILCS 5/55.8 any person selling new or used tires at retail or offering new or used tires for retail sale in this State shall: (1) collect from retail customers a fee of \$2 per new and used tire sold and delivered in this State to be paid to the Department of Revenue and deposited into the Used Tire Management Fund, less a collection allowance of 10 cents per tire to be retained by the retail seller and a collection allowance of 10 cents per tire to be retained by the Department of Revenue and paid into the General Revenue Fund.

After July 1, 2003 the retailer is required to collect an additional 50 cents per new or used tire sold and delivered in this State. See 415 ILCS 5/55.8(a)(1.5). This fee is collected up-front on the retail sale of new or used tires. The actual disposal or donation of the old used tires has no bearing on collection of the Tire User Fee imposed.

Additional information regarding updates on the Tire User Fee may be found in the current bulletins posted on the Department's website. For instance, please see Publication 118.

Shipping and handling: We refer you to the Department's regulations "Cost of Doing Business Not Deductible" at 86 Ill. Adm. Code 130.410 and "Transportation and Delivery Charges" at 86 Ill. Adm. Code 130.415.

Core charges: When an item of tangible personal property is sold at retail and includes a core fee, the full retail-selling price of the item, including the core fee, is subject to Retailers' Occupation Tax liability. The fact that part of the gross receipts from the sale of an item of tangible personal property is labeled a "core charge" does not change the taxable nature of the transaction. A core charge is merely considered part of the charge for the sale of the new part and is always taxable.

The tax consequences are different if the customer provided the "core" to the retailer at the time of purchase. In that situation, the core would be considered to be a like kind trade-in and no core charge would be made. It is possible that the customer will not take the old core back. However, if a core is returned by a purchaser for a refund of the core charge, the entire amount of the core charge should be refunded along with any tax paid by the purchaser. If a partial refund is provided (such as for a prorated battery or damaged return) the amount of tax relating to the partial refund amount should also be refunded to the purchaser.

Sales to out-of-State Customers: Sales tax does not extend to gross receipts from sales in which the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to a point within this State, provided that delivery is actually made. See 86 Ill. Adm. Code 130.605(b).

Nor does the tax apply to gross receipts from sales in which the seller, by carrier (when the carrier is not also the purchaser) or by mail, under the terms of his agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State. The fact that the purchaser actually arranges for the common carrier or pays the

carrier that effects delivery does not destroy the exemption. However, it is critical that the seller is shown as the consignor or shipper on the bill of lading. If the purchaser is shown as either the consignor or the shipper, the exemption will not apply. See 86 Ill. Adm. Code 130.605(c).

If you require additional information, please visit our website at [www.ILTAX.com](http://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,

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