

When a construction contractor permanently affixes tangible personal property to real property, the contractor is deemed the end user of that tangible personal property. As the end user, the contractor incurs Use Tax on the cost price of that tangible personal property. See 86 Ill. Adm. Code 130.2075. (This is a GIL.)

December 10, 2008

Dear Xxxxx:

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

We are currently registered in Illinois and are collecting and remitting sales & use tax. I am updating our tax compliance files and need some general information.

We are a sign manufacturing company in CITY/STATE. The signs we make include pole signs, (but not billboards) building signs and letters, building awnings and interior signs such as menu boards and 'Open' signs. Generally, these are permanent electrical signs bolted to walls or a concrete base, identifying the business. Occasionally, we ship banners or project signs which are temporary. We sometimes furnish & install door vinyl showing the hours the business is open. If these signs are to be installed, we will ship them to an independent sign company in Illinois who acts as our subcontractor. The subcontractor bills us, we add a mark up and bill our customer for the sign & installation. Our freight is normally by common carrier, is marked up & is separately stated on the customer's invoice. Ownership of the signs passes to the customer after installation & payment in full. We have no employees or locations in Illinois. Please answer the following questions:

- 1) What is taxable to our customer for the various signs mentioned above?
- 2) Other charges that may appear on our invoices are:

- Installation
- Removal of old signs
- Crating
- Freight
- City Permits
- Material & labor to connect the sign to electricity
- Preliminary survey to determine what signs are needed
- Engineering Fees

How does tax apply to each of above services?

- 3) How is the tax handled when we hire an independent contractor to do repairs on signs?

Thank you for your assistance.

DEPARTMENT'S RESPONSE:

A person who sells signs that have commercial value (i. e., value to persons other than the purchasers) incurs Retailers' Occupation Tax (sales tax) liability when making such sales, even if such signs are produced on special order for the purchaser. Examples of signs having such commercial value would be ones that spell out "real estate", "insurance," or "hamburgers," and which do not spell out the name of the purchaser nor the brand name of the purchaser's product and which are not otherwise similarly individualized. See 86 Ill. Adm. Code 130.2155 regarding vendors of signs. When a sign that has commercial value is sold and installed, the installation charge is also subject to Retailers' Occupation Tax unless there is a separate agreement for the installation charge. See 86 Ill. Adm. Code 130.450.

If the sign vendor produces a sign on special order of the customer and the sign is so specialized that it would have no commercial value to anyone other than that particular customer who placed the order, the sign vendor would not incur Retailers' Occupation Tax liability. These transactions would be subject to liability under the Service Occupation Tax Act and the sign vendor would be considered a serviceman. See generally, 86 Ill. Adm. Code 140.101.

All of the above assumes that the signs remain tangible personal property after installation. If the signs were permanently affixed structurally as real estate, then there would be different tax consequences. Under Illinois law, a person who takes tangible personal property off the market and converts it into real estate is deemed a construction contractor and is the legal end-user of the tangible personal property. The construction contractor, as the user, incurs Illinois Use Tax and local Retailers' Occupation Tax reimbursement liabilities when the tangible personal property that will be converted into real estate is purchased from registered Illinois suppliers. If such items were purchased from suppliers that did not collect the tax, the person who converts the tangible personal property into real estate is required to self-assess and remit the Use Tax to the Department based upon the cost price of the property. For information on construction contractors, see 86 Ill. Adm. Code 130.1940 and 130.2075.

In regards to your questions concerning freight, as a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always included in gross charges subject to tax in retail sale situations. See, 86 Ill. Adm. Code 130.410. However, such charges are often stated in combination with shipping charges. In this case, charges designated as "shipping and handling," as well as delivery or transportation charges in general, are not taxable if it can be shown

that they are both separately agreed to apart from the selling price of the tangible personal property sold, and that such charges are actually reflective of the costs of shipping. To the extent that shipping and handling charges exceed the costs of shipping, the charges are subject to tax.

The best evidence that shipping and handling or delivery charges have been contracted for separately by purchasers and retailers are separate contracts for shipping and handling or delivery. However, documentation that demonstrates that purchasers had the option of taking delivery of the property, at the sellers' location for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice. If retailers charge customers shipping and handling or delivery charges that exceed the retailers' cost of providing the transportation or delivery, the excess amount is subject to tax.

If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

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.

Very truly yours,

Debra M. Boggess
Associate Counsel

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