

Persons who engage in the business of selling items, such as custom cabinets, that serve substantially the same function as stock or standard items of tangible personal property which are sold at retail incur Retailers' Occupation Tax liability when selling such items (with or without installation by the seller) to purchasers for use or consumption and not for resale whether the seller produces such items on special order for the purchaser. See 86 Ill. Adm. Code 130.2140. (This is a GIL.)

December 2, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter received July 29, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I was advised to write you for a legal opinion. I own a very small company in Chicago that sells wooden radiator cabinets. I've contracted out to a Cabinet-Maker in STATE to make the cabinets. Completed cabinets are delivered and installed by the cabinet-maker.

What prompted this inquiry, was a rather irate response from a tax attorney in Chicago who insisted that he shouldn't have to pay 8.75% tax on a cabinet that was custom made (as all are) for his specific radiators. He insisted that he can't take the cabinets with him when he moves since they certainly won't fit a different set of radiators elsewhere. On that point he's right. Given the varied sizes of radiators, door, window and stair locations, his cabinets will not fit the radiators of any other house. Many times the cabinets have to be attached to walls to prevent them from falling forward and I do understand that in those cases the customer would not pay sales tax since the cabinet 'becomes' part of the house but is it any less so if the cabinet was custom sized for a specific radiator and will never leave that house?

I do understand that when I have to secure a cabinet to the wall, I am required to pay 6.25% on the wholesale price of that cabinet.

I would appreciate your opinion on the above information.

86 Ill. Adm. Code 130.2140, enclosed, states that persons who engage in the business of selling items, such as custom cabinets, that serve substantially the same function as stock or standard items of tangible personal property which are sold at retail incur Retailers' Occupation Tax liability when selling such items (with or without installation by the seller) to purchasers for use or consumption and not for resale whether the seller produces such items on special order for the purchaser.

Section 130.2140 states that "[i]n computing Retailers' Occupation Tax liability on the retail sale of custom-made items, no deduction may be taken for the cost of labor involved in producing the finished item for sale. This is true whether such production labor is included in a lump sum price with the tangible personal property or whether such production labor is priced separately from the tangible personal property. The thing that is being sold is the finished item (drapes, carpeting, cabinets, etc.), and the cost of labor involved in making such item is no more deductible than is the cost of labor that is involved in producing a stock or standard item for sale."

Please note, however, that the regulation states that "receipts from installation charges are deductible from total receipts in computing Retailers' Occupation Tax liability if such charges are contracted for by the seller and the purchaser separately from the selling price of the finished tangible personal property, but even receipts from installation charges are taxable if the installation charge is included in a lump sum price with the tangible personal property." See 86 Ill. Adm. Code 130.450, enclosed.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk

Enc.