

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL.)

December 14, 1998

Dear Ms. Xxxxx:

This letter is in response to your letter dated October 9, 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:

COMPANY is a manufacturer of PRODUCT who is registered to collect Illinois sales/use taxes. We sell to our customer who is also registered to collect Illinois sales/use taxes.

As indicated in *Title 86 Part 130 Section 130.1401(a)*, we are required to determine if the purchaser is buying the property for use/consumption or resale. We also know under *Title 86 Part 130 Section 130.2075(b)(1)* a contractor can give us a resale on property sold 'over-the-counter' or when it is impracticable at the time of sale to determine use of that property.

The type of equipment being purchased is large expensive commercial grade PRODUCT. Typically our customers do not place an order with us until they have a contract with an owner. Many times, again because of size, our customer will have the equipment shipped to the job site or a riggers yard.

We expect our customers that take tangible personal property and permanently affix it to real estate to pay us Use Tax as they are considered a construction contractor and the consumer of the goods they buy. (*Ruling ST-98-0037-GIL dtd 2/20/98*)

When the owner is a holder of an 'E' number, we expect our customers to give us the contractor's certification and 'E' number of the group whose real estate that the property will be incorporated into. (*Ruling ST-98-0063-GIL dtd 3/9/98*)

The problem that we are facing is that our customers who are registered to collect Illinois sales/use taxes believe that their

resale will cover all of their business activities including when they act like a construction contractor.

We respectfully request a ruling that addresses the situation of a registered retailer who also acts like a construction contractor and the appropriate tax documentation they should give vendors in those contracting situations.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term construction contractors includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term contractor means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

As previously stated, contractors are deemed end users of property that is purchased for incorporation into real property. If general contractors did not purchase the tangible personal property, then the general contractors cannot be held liable for tax due on another entities' purchases. 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.

OVER THE COUNTER SALES

Construction contractors incur Retailers' Occupation Tax liability when they engage in selling any kind of tangible personal property to purchasers without permanently affixing the tangible personal property to real estate. See 86 Ill. Adm. Code 130.1940(b)(1). Construction contractors can purchase such tangible personal property tax-free for resale by providing their suppliers with Certificates of Resale. See 86 Ill. Adm. Code 130.1405, enclosed. Their Illinois suppliers and suppliers who are "retailers maintaining a place of business in Illinois", must retain certificates of resale in order to document the resale exemption.

As sellers required to collect Illinois tax, Companies must either charge tax or document exemptions when they make deliveries in Illinois. In order to document the fact that their sales to Purchasers are sales for resale, Companies are obligated by Illinois to obtain valid Certificates of Resale from Purchasers. See the enclosed copy of 86 Ill. Adm. Code 130.1405. Certificates of Resale must contain the following items of information.

1. a statement from the purchaser that items are being purchased for resale;
2. seller's name and address;
3. purchaser's name and address;
4. a description of the items being purchased for resale;
5. purchaser's signature and date of signing;
6. purchaser's registration number with the Illinois Department of Revenue;

purchaser's resale number issued by the Illinois Department of Revenue; or,

a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

A retailer would not be liable for Retailers' Occupation Tax on the gross receipts from a sale when the retailer accepts a Certificate of Resale (see, 86 Ill. Adm. Code 130.1405) that contains a valid registration number. If a retailer properly documents a sale for resale with a Certificate of Resale containing a valid registration number, the retailer is not required to determine if the purchaser actually resells the items or instead uses or consumes them. However, a retailer may not induce a customer to provide a Certificate of Resale for a purchase when that purchase is not for resale.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. 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.