

ST 02-0265-GIL 12/12/202 CONSTRUCTION CONTRACTORS

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. See 86 Ill. Adm. Code 130.1940. (This is a GIL).

December 12, 2002

Dear Xxxxx:

This letter is in response to your letter dated September 24, 2002. 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 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at [www.revenue.state.il.us/Laws/regs/part1200/](http://www.revenue.state.il.us/Laws/regs/part1200/).

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

Today I called your telephone taxpayer assistance line with respect to a question I had, and received an answer that was quite surprising to me. Unfortunately, the person whom I spoke to couldn't give me any specific reference for his answer; and I saw no benefit to pressing the situation. Accordingly, I am now contacting you for an official interpretation.

My client has essentially two separate businesses; however, they are operated out of one facility by one corporation. The first business is the service and repair of gasoline station equipment, principally the gasoline dispensing units. This particular activity accounts for approximately 20% of their gross revenue. The other 80% of their gross revenue consists of their 'construction' activities. The construction activity can be something as simple as replacing a customer's pumps to a complete overhaul of their whole system including, but not limited to, digging up and replacing the fuel tanks, reconstructing the fuel islands and installing all new pumps, and installing new canopies which are permanently attached to the existing real property and are there to protect the equipment and the patrons from the elements. On the average, approximately 30% of the total contract is for tangible personal property, all of which is installed onto the real estate.

I have carefully read Section 130.1940 of Part 130 of the Illinois Department of Revenue Regulations. My interpretation of reading those regulations was that they applied to anybody who was improving real property. Specifically, 130.1940(c) states that a construction contractor does not incur retailer's occupational tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures) incorporated into a structure as an integral part thereof for an owner when furnished and installed as an incident of a construction contract. As you well know, 'structure' is defined in Subsection (a)(4). My reading of that definition did not lead me to believe that the

installation of these fuel tanks, gasoline pumping units, and related equipment could be considered improvements to a 'structure.' Certainly, I do believe that canopies, or items similar to that, would in fact be part of the 'structure' definition; however, your phone person stated that as long as it is permanently attached to real property it is an 'improvement.'

In summary, I would like a ruling as to whether or not my client is not responsible to 'incur' retailers occupational tax liability from the contracts for the installation of the pumping equipment and related tanks, which also includes a substantial amount of ancillary work, wherein the actual cost of the equipment is, on the average, 30% of the total contract price. Alternatively, since one could possibly argue that because the equipment cost is so small in relation to the total contract price, that my client is really providing a service. As such, I would appreciate your opinion that, if this enterprise is not determined to be a construction contractor, then are they more of a service enterprise and responsible for the related SOT liability or are they considered a retailer and responsible for the ROT?

I will appreciate your immediate attention and response.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201.

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.

Contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. The permanent installation of underground fuel tanks and the installation of pumping units that are attached to a concrete base are generally construction contractor situations.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://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 Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.