

A contract to incorporate tangible personal property into real property is considered a construction contract. A contractor incurs Use Tax on the cost price of the tangible personal property that is installed. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL.)

September 22, 2005

Dear Xxxxx:

This letter is in response to your letter dated March 31, 2004, 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:

**Taxpayer Requesting PLR**

ABC, is requesting a Private Letter Ruling from the Illinois Department of Revenue, as allowed under Ill. Admin. Code §1200.110. ABC is a STATE corporation. ABC sells, installs, and rents tangible personal property at wholesale and retail in Illinois. In some instances, the installations may result in an improvement to real property.

**Statement of Facts and Other Information Pertinent to this Request**

The products sold to customers at issue here are custom-made shutters, commonly referred to as SHUTTERS. They are made from wood or resin materials, and are manufactured to fit one particular window in a customer's home. Shutters made for two different windows are not interchangeable with each other. The shutters are installed with finishing nails and glued or caulked into place in a similar manner as a doorframe. The actual shutter is attached by hinges to the shutter frame, and is custom made to fit the individual window and shutter frame. Removal of the shutter can result in substantial damage to the window frame. The shutters are sensitive to heat and humidity, and must be installed in temperature-controlled environments in order to insure proper fit.

The independent installer is contracted to provide material and labor related to the installation of these custom-made shutters. They are asked to quote ABC one cost price

for the entire job, and ABC in turns sells that job to the customer as one lump sum retail price. ABC does not take physical possession of the inventory or materials involved in these custom-made shutters at any time during the transaction.

The independent installer maintains their own stock of the materials to manufacture these shutters, and removes inventory from his stock as the orders are confirmed and measurements and other pertinent information received.

### **Contracts, Licensees, Agreements, Instruments or Other Documents Relevant to this Request**

Please find attached two exhibits:

**Exhibit 1:** A sample copy of the contract (customer service agreement) between ABC and our Customer

**Exhibit 2:** A sample copy of the contract between ABC and our service provider (sub-contractor).

### **Identification of the Tax Periods at Issue and Disclosure of Pending Audit or Litigation with the Department**

ABC has been audited by the Illinois Department of Revenue, and is current through June 30, 2002. As the result of a Refund Claim, the Department indicated that it wished to audit the claim only. The issue in this request for Private Letter Ruling is not currently under audit or in litigation with the Department.

### **Statement of Similar or Predecessor Ruling**

To the best of our knowledge, ABC or any predecessor companies made no similar ruling request.

### **Statement of Authorities Supporting Taxpayer's View and Explanation of Grounds for Conclusion**

ABC believes that Under 86 Ill. Admin. Code §130.1940, the construction contractor (ABC) does not incur Retailers' Occupation Tax liability upon the receipts from labor and tangible personal property incorporated into a structure, as an integral part thereof for an owner when furnished and installed as an incident of a construction contract. We believe instead that a use tax incidence occurs on our sub-contractor on the cost of the tangible property that is incorporated into real estate.

### **Identification of any Trade Secret Information Taxpayer wishes to be deleted in Publicly Disseminated Versions of PLR**

ABC hereby identifies the following as Trade Secret Information, and requests that the Department delete this information in publicly disseminated versions of the Private Letter Ruling:

- Exhibit 1: A sample copy of the contract (customer service agreement) between ABC and our Customer
- Exhibit 2: A sample copy of the contract between ABC and our service provider (sub-contractor).

Thank you in advance for your prompt attention to our request for ruling. If you need any additional information or have any question or comments, please contact me.

## DEPARTMENT'S RESPONSE:

The Department has insufficient information in which to issue a private letter ruling. We have requested this information from your office on no less than three (3) occasions without a response. The sample contracts referred as exhibits 1 and 2 in your letter were not enclosed with your letter request. Without a copy of the exhibits we are unable to determine the exact nature of the relationship between ABC, the independent installer, and the customer. I hope the following general information will aid you in a determination of your tax liabilities.

A contract to incorporate tangible personal property into real property is considered a construction contract. 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, these contractors incur Use Tax liability for such purchases based upon their cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. Therefore, any tangible personal property that a construction contractor purchases that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If such contractors did not pay the Use Tax liability to their suppliers, those contractors must self-assess their Use Tax liability and pay it directly to the Department.

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as "sales tax," but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor's part.

I hope this information is helpful. 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,

Edwin E. Boggess  
Associate Counsel

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