

This letter describes the standard drop-shipment scenario and certificates of resale. 86 Ill. Adm. Code 130.225. (This is a GIL.)

March 3, 2010

Dear Xxxxx:

This letter is in response to your letter dated January 5, 2010, 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](http://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:

Your office was contacted in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006 and 2008 to assist the ABC in its publication of the *SURVEY*. Forty-five states and the District of Columbia were each asked to respond to the 10 survey questions relating to third-party drop shipment transactions. All jurisdictions responded, and the results were compiled and published in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006 and 2008. Your office was sent a copy of each of the publications. An additional 2008 copy is enclosed for your reference.

We have had continuing favorable reaction to this publication, so much so that the ABC is going to completely reprint the survey for 2010 which will be the Tenth Edition. Over 900 copies of the 2008 survey were ordered by the majority of the Fortune 1000 corporations and the reaction to this monographic study has been overwhelmingly favorable with many requests for a complete update that would reflect statute and administrative changes in the various states since the Ninth Edition was released in June 2008.

Therefore, we are contacting all of the 46 taxing jurisdictions that responded in 2008 to the questionnaire that appears on pages ii-iii of the *2008 SURVEY* and are asking each of them to review their responses related thereto and to respond anew to each of the 10 questions.

We would be most appreciative if you would take the time to respond to the ten questions and furnish any updated respondent address information that is appropriate **(please include an e-mail address, if you wish)**. When all of the states and the District of Columbia have replied, the information will be republished in a new booklet and you will be sent, of course, a courtesy copy. Please direct your replies to my attention at the following address where the compilation will take place:

### **NAME/ADDRESS**

A reply by you no later than March 12, 2010, would be most gracious on your part given the time schedule that we have allowed for information gathering and printing of this new 2010 survey. If you have any questions, do give me a call.

### **DEPARTMENT'S RESPONSE:**

The Department cannot approve publications other than those issued by the Department of Revenue. However, Illinois law has not changed since our specific answers were provided to your 2006 survey.

For general information regarding drop shipments and resale certificates we refer you to the Department's regulations regarding Drop Shipments at 86 Ill. Adm. Code 130.225 and Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale at 86 Ill. Adm. Code 130.1405. A drop-shipment situation is normally one in which out-of-State purchaser (Purchaser) makes a purchase for resale from a company (Company) which is registered with Illinois and has that Company drop-ship the property to Purchaser's customer (Customer) located in Illinois. For purposes of this discussion, it is assumed that Purchaser is an out-of-State company that is not registered with the State of Illinois and does not have sufficient nexus with Illinois to require it to collect Illinois Use Tax.

Company, as a seller required to collect Illinois tax, must either charge and collect tax or document appropriate exemptions when making deliveries in Illinois. In order to document the fact that its sale to Purchaser is a sale for resale, Company is obligated by Illinois to obtain a valid Certificate of Resale from Purchaser. See 86 Ill. Adm. Code 130.1405. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. In addition to the statement that the property is being purchased for resale, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) The purchaser's name and address;
- 3) A description of the items being purchased for resale;
- 4) Purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing; and
- 5) Registration Number, Resale Number, or a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (*i.e.*, it was not purchased for resale), the Department will proceed against the purchaser, not the

retailer, provided the above stated conditions are met. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois. The risk run by a retailer in accepting such other documentation and the risk run by purchasers in providing such other documentation is that an Illinois auditor is more likely to require that more information be provided as evidence that the particular sale was, in fact, a sale for resale.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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