

When a construction contractor permanently affixes tangible personal property to real property, the contractor is deemed the end user of that tangible personal property. As the end user, the contractor incurs Use Tax on the cost price of that tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. (This is a GIL.)

April 6, 2010

Dear Xxxxx:

This letter is in response to your letter dated February 22, 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:

I have a client who is a STATE steel fabricator and steel erector. This taxpayer has a structural steel fabrication facility in STATE. After the material is cut, welded, punched and painted to meet the specifications from the architect or owner, the steel is loaded on a truck and taken to the Illinois job site. Approximately 70% of taxpayer's revenue is from fabrication and 30% from erection. All the activity is operated in a single operation.

I am writing to ask for your guidance on how Illinois sales and use tax applies to this business. When he quotes the transaction, he quotes the fabricated metal price separate from the steel erection service price, although both are performed by the same corporation. It is my belief, but I'm looking for confirmation, that the proper Illinois sales tax to this business would be:

1. The business should charge Illinois sales tax to the owner or contractor purchasing the fabricated steel.
2. The erection service where taxpayer uses his crane or rented equipment and his employees to erect the steel would be a service and not subject to Illinois sales tax.

3. In the event that the business both fabricated and erected the material, the separately stated selling prices for materials and service would permit the materials to be subject to Illinois sales tax while the service is not subject to Illinois sales tax.

I appreciate your clarification in this matter so that we can properly advise the taxpayer on his systems and processes to pay the correct amount of Illinois sales and use tax.

If any questions, please call.

## **DEPARTMENT'S RESPONSE:**

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales.

A contract that provides for both the sale and installation of tangible personal property that is permanently affixed or incorporated into a structure is considered a construction contract. The tax liabilities regarding construction contractors in Illinois may be found at 86 Ill. Adm. Code 130.1940 and 130.2075 on the Department's Internet website. The term construction contractor includes general contractors, subcontractors, and specialized contractors such as landscape 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, 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 register and self assess their Use Tax liability and pay it directly to the Department. If the contractors have already paid a tax in another state regarding the purchase or use of such property, they will be entitled to a credit against their Illinois Use Tax liability to the extent that they have paid tax that was properly due to another state. See 86 Ill. Adm. Code 150.310.

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.

When the purchasing construction contractor (whether he is the prime contractor or the subcontractor) buys the item that he will convert into real estate in finished form, the tax base is what

such construction contractor pays for the item. When the construction contractor-installer (whether he or she is the prime contractor or a subcontractor) is also the manufacturer of the finished item that he or she will incorporate into real estate for his or her customer, the tax base is what such construction contractor pays for the materials that he incorporates into such finished item, plus whatever such construction contractor may pay for nails, screws or other items of tangible personal property that he buys and incorporates into real estate for his customer in the course of making the installation of the finished item. See 86 Ill. Adm. Code 2075(a)(2).

Section 130.1940(c) addresses situations where tangible personal property is permanently affixed or incorporated into a structure incident to a construction contract. As previously noted, a construction contractor does not incur Retailers' Occupation 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. A construction contract that provides for both the sale and installation of tangible personal property that is permanently affixed or incorporated into a structure may separately state the cost of installation and the cost of the tangible personal property and remain a construction contract for sales tax purposes. The fact that the installation costs and the tangible personal property costs are separately stated in the contract or on the billing does not change the tax consequences of the transaction.

Please note that any equipment brought into Illinois and used in the erection of the structural steel also is subject to Use Tax liability. As noted above, if the contractor has already paid a tax in another state regarding the purchase or use of such property, he or she will be entitled to a credit against his or her Illinois Use Tax liability to the extent that he or she has paid tax that was properly due to another state. See 86 Ill. Adm. Code 150.310.

I must further note that the information I have provided is based on the assumption that the fabricated steel is either permanently affixed to or incorporated into real property by your client in all cases. If this is not the case, your client may incur either Service Occupation Tax liability or Retailers' Occupation Tax liability in those situations.

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,

Richard S. Wolters  
Associate Counsel

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