

A person does not incur Retailers' Occupation Tax liability on the gross receipts from an isolated or occasional sale. See 86 Ill. Adm. Code 130.110. (This is a GIL.)

June 3, 2010

Dear Xxxxx:

This letter is in response to your letter dated May 20, 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:

ABC may be selling surplus equipment in your state in the future and we would like to clarify whether or not we should be collecting sales tax on these sales.

ABC is in the business of maintaining right of ways for utility companies (tree trimming, substation maintenance, etc). From time to time we sell surplus equipment consisting of trucks, automobiles and non-titled, off road, equipment such as wood chippers, grass mowers and agricultural tractors. We are not a dealer in used equipment and we do not expect to sell more than 10 pieces of equipment in your state annually. We do work in your state and are registered to collect sales and use tax.

Would you please respond in writing to let us know if we should be collecting sales tax on the sale of both categories of equipment (titled and/or registered vehicles and non-titled equipment?)

I can be contacted if you have any questions or need additional information.

Thank you for your time and attention to this request.

**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. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

A person does not incur Retailers' Occupation Tax liability on the gross receipts from an isolated or occasional sale. See 86 Ill. Adm. Code 130.110 regarding "Occasional Sales." Consequently, the purchaser of that tangible personal property does not incur a corresponding Use Tax liability on that purchase. See 86 Ill. Adm. Code 150.101(d). As a general proposition, the occasional sale exemption is only available when a person or entity purchases an item and then, after using the item, disposes of it by selling it. See 86 Ill. Adm. Code 130.110. For example, if a retailer sells tangible personal property, such as machinery or other capital assets, which he has used in his business and no longer needs, and which he does not otherwise engage in selling, he does not incur Retailers' Occupation Tax liability when selling such tangible personal property, even if the sales are at retail and even if he may be required to make a considerable number of such sales in order to dispose of such tangible personal property, because such sales are isolated or occasional and do not constitute a business of selling tangible personal property at retail. See Section 130.110(b). However, the sale will not qualify as an isolated or occasional sale if the person holds himself out as being engaged in the retail sale of that item or similar type of tangible personal property.

Even though a purchaser may not incur a Use Tax liability on a purchase of tangible personal property in an occasional sale transaction, the purchaser of specific types of tangible personal property may still incur a tax liability in this State under the Aircraft Use Tax Law (35 ILCS 157/10-1 *et. seq.*), Watercraft Use Tax Law (35 ILCS 158/15-1 *et. seq.*), or Vehicle Use Tax (625 ILCS 3/3-1001 *et. seq.*).

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  
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