

If a sale is made in a jurisdiction that imposes a local tax, that tax will be incurred. In situations in which both the sale and the location of the property being sold at the time of the sale are outside of the State of Illinois, such sales would only be subject to the Illinois Use Tax at the rate of 6.25%. See 86 Ill. Adm. Code 270.115. (This is a GIL.)

September 2, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 21, 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 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:

This is a formal request for determination as to whether COMPANY is required to collect and submit to the Illinois Department of Revenue the COUNTY, Illinois 1% sales tax for schools effective July 1 2010.

COMPANY sells major appliances and is located on the border of Indiana and Illinois. Our store regularly sells and delivers to customers who reside in Illinois, and the customers are charged the Illinois sales tax rate of 6.25%. In March, 2010, I read a newspaper article in the *PUBLICATION* which stated COUNTY, Illinois enacted a 1% sales tax increase for their schools effective July 1, 2010.

To get further information on this tax and how it would affect COMPANY, I called the Illinois Department of Revenue at 217-785-3707 on March 22, 2010 and spoke to a woman named Cheryl regarding this issue. She did not show any information specifically about the COUNTY tax increase on her records but said it was such a long and extensive process, that it would probably be in July when the records were updated.

Cheryl then told me that since our truck delivers to COUNTY, the truck is considered a temporary sales location in COUNTY and the 1% additional tax would need to be

collected. I asked if this would be paid through WebFile and if a different worksheet was used for it. She said I would need to call back in July to tell the Illinois Department of Revenue that COMPANY needed to change the way it was set up in WebFile so this tax could be paid. She also suggested I call the local city or county clerk to get the correct effective date as the timelines printed in newspapers are not always accurate.

That same day, March 22, 2010, I called the COUNTY Clerk. She said she had been told that we would have to charge the 7.25% sales tax (6.25% Illinois plus 1% COUNTY) although there were some exceptions such as farm equipment, groceries, and medical. She had just mailed in the paperwork to the Illinois Department of Revenue. I am enclosing a copy of the tax information faxed to me on 4-20-10.

On July 20, 2010, I called the Illinois Department of Revenue to get the WebFile change requested. I spoke to a man named INDIVIDUAL. He told me that local taxes do not apply since our store is not physically based in COUNTY and that we have no salesmen or warehouses in that county. He told me I was told wrong by both Cheryl with the Illinois Department of Revenue and the COUNTY Clerk. He had me go to the Illinois Department of Revenue website to see the documentation. Under Regulations, Title 86: Revenue, Part 130, Retailers' Occupation Tax, Section 130.610 Sales of Property Originating in Other States. He said that parts d)1)B and C applied to our store and that no Retailers' Occupation Tax liability was incurred. A copy of this document is enclosed.

I asked INDIVIDUAL to send me a letter stating our store was not obligated to collect and remit this 1% tax to the Illinois Department of Revenue. He told me he was unable to do this and that I needed to request such a letter through the Legal Counsel department.

I would appreciate receiving a determination letter from your department as quickly as possible so we have legal proof as to what taxes we are supposed to be collecting and remitting to the Illinois Department of Revenue. I have invested a lot of time, energy, and money into setting up our computer system to determine which customers need to be charged this additional 1% tax. Our store will continue to collect the tax until we receive your official letter of determination. If we do not have to collect this tax, we will refund our customers the 1% tax money already collected.

Thank you very much for your prompt attention in resolving this issue. Please contact me if you need additional information.

DEPARTMENT'S RESPONSE:

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. These taxes comprise what is commonly known as "sales" tax in Illinois.

In general, the imposition of the various local sales taxes in Illinois takes effect when "selling" occurs in a jurisdiction imposing a tax. See for example 86 Ill. Adm. Code 270.115(b). The local tax rate, if any, is fixed by the location where the sale takes place, not the delivery location. The fact that the item being sold is shipped from an out-of-State location or from another Illinois location is

immaterial for purposes of the imposition of local taxes if the sale occurs in an Illinois jurisdiction imposing a local tax. For these transactions, the local tax imposed in the jurisdiction where the sale occurs will be incurred.

If a sale occurs outside the State, but the property being sold is located in an inventory of the retailer which is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. In situations in which both the sale and the location of the property being sold at the time of the sale are outside of the State of Illinois, such sales would only be subject to the Illinois Use Tax at the rate of 6.25%.

Although the regulation cited above (86 Ill. Adm. Code 270.115) deals with the municipal home rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department, including the County School Facility Tax.

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

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:mzk