

This letter concerns tax imposed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

December 28, 2011

Dear Xxxxx:

This letter is in response to your letters dated November 22, and December 16, 2011, 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 dated November 22, 2011, you have stated and made inquiry as follows:

### **Background Facts**

CORPORATION is a graphic arts 'de-minimis' servicemen [sic] (**as defined in §140.120**) duly registered with the Illinois Department of Revenue since DATE, 2011. Prior to that date, CORPORATION operated under the assumption that it was not required to be registered as a de-minimis servicemen [sic] with the Illinois Department of Revenue. Further, upon learning that most of the CORPORATION's Illinois vendor/suppliers are not registered with the Illinois Department of Revenue, presumably because subcontractors are also de-minimis servicemen not required to register, CORPORATION retained the professional tax services of a licensed tax representative. Additionally, there are advantages to being registered as a de-minimis servicemen. [sic] Accordingly, as the tax representative for the CORPORATION, we were retained (amongst other things) for the specific purpose of performing a self-audit to ensure that the accurate amount of sales/use tax is determined and paid to the Illinois Department of Revenue within a short period of time.

Further, we immediately requested and shortly thereafter received written approval from the Board of Appeals on behalf of the CORPORATION's Voluntary Disclosure Application (VDA) as submitted on Form BOA-2, in accordance with **§210.126**. See attached approval letter from INDIVIDUAL as well as another letter sent via email approving a 60 day extension of time until DATE, 2012.

CORPORATION is a 'de-minimis' serviceman who produces custom printed matter at its printing facility located in CITY, IL. Additionally, CORPORATION verbally contracts with other commercial printers/brokers hereinafter referred to as 'sub-contractors' [sic] who are also presumably de-minimis servicemen. These other Illinois de-minimis sub-contractors [sic] provide all the tangible personal property required to produce the custom printed mater. Furthermore, in most instances, these subcontractors are also contractually responsible for shipping the finished custom printed matter to said CORPORATION's customers, most of which are located throughout the State of Illinois. Lastly, these de-minimis servicemen sub-contractors [sic] have invoiced CORPORATION, without charging said CORPORATION the Illinois service occupation tax or the Illinois service use tax on either their actual cost price or (in the alternative) on 50% of their total invoice price to said CORPORATION. More importantly, CORPORATION always communicated that transactions were taxable, and therefore, never offered a resale certificate to any of its sub-contractors. [sic]

Next, CORPORATION produces and/or sub contracts [sic] with other commercial de-minimis servicemen sub-contractors/brokers [sic] to produce custom printed matter for exempt organizations, including but not limited to municipalities and IRC 501(c)(3) organizations under Title 26 USC 501, who have provided said CORPORATION a copy of their Illinois tax exemption identification number a/k/a an 'E number' in support of their exemption from Illinois sales & use tax.

### **Private Letter Ruling Request**

The purpose of this private letter ruling request is to secure a definitive and articulate answer including confirmation that the Illinois Administrative Code as cited by us is correct as it relates to each of the following three (3) independent situations:

- 1) Please confirm your agreement that in a situation whereby the CORPORATION contracts with a sub-contractor [sic], CORPORATION has the option to self-assess the Illinois service use tax at a rate of 6.25% on 50% of the sub-contractor's [sic] invoice price, as supported by **§140.101(e) & §130.2000(c)(3)**. Further, in this same situation, since CORPORATION is a de-minimis servicemen [sic] considered to be the end user, and therefore, CORPORATION is not allowed to collect a 'tax' from its customer, as supported by **§140.108(a)(3) and §140.108(4)(d)**.
- 2) Please confirm your agreement that in a situation whereby the CORPORATION directly produces custom printed matter at its own facility, CORPORATION has the option to self-assess Illinois service use tax at a rate of 6.25% on 50% of its vendor's invoice price thereby representing the total cost of ingredients, e.g. ink, paper, envelopes, etc. i.e. the value of the tangible personal property transferred incident to the performance of services as supported by **§140.145(d) and §140.108(a)(3)**. Further, in this same situation, since CORPORATION is a de-minimis servicemen [sic] considered to be the end user, and therefore, CORPORATION is not allowed to collect a 'tax' from its customer, as supported by **§140.108(a)(3) and §140.108(4)(d)**.

- 3) Please confirm your agreement that CORPORATION can purchase its ink, paper, and other raw material ingredients tax-free from its vendor/supplier whenever its customer is an exempt organization that has provided a valid Illinois tax exemption identification number (a/ka [sic] as an E number) to said CORPORATION who in turn provided the E number to its vendor/supplier, as required and supported by **§130.120(i) and §140.108(a)(2)(A)**.

In accordance with the requirements for requesting a private letter ruling, specifically, **III. Admin. Code 2 §1200.110**, CORPORATION through its tax representative has been authorized pursuant to a duly executed Illinois Power of Authority [sic] by said CORPORATION through the authority conferred upon its President & Sole-shareholder. Accordingly, I hereby represent that said CORPORATION is not under audit nor does said CORPORATION have any litigation pending before the Illinois Department of Revenue. Further, to the best of my knowledge, said CORPORATION, has never requested that the Illinois Department of Revenue rule on the same or similar issue for said CORPORATION.

Next, due to the fact that the VDP substitute returns [sic] extended due date is fast approaching, I would really appreciate your written response to the Private Letter Ruling request on or before DATE, 2011 as the CORPORATION wants to file and pay the correct amount of tax prior to DATE, 2011. Further, in the event you have any questions or would like to schedule an in-person meeting so that I can provide more clarification and/or more information, please call me as it is extremely important that the CORPORATION receive the valuable benefit of certainty that is afforded by virtue of the issuance of a favorable Illinois private letter ruling by the Illinois Department of Revenue-Legal Division.

Lastly, in the event you cannot confirm the tax research provided in each of the three independent situations, i.e. you cannot issue a favorable private letter ruling, please call me to discuss the reasons why as well as to give me the opportunity to formally modify the request for a private letter ruling to include only those favorable situation(s) as well as the right to formally withdraw the entire request for a private letter ruling. Again, thank you very much for your time.

(The referenced tax research material is omitted.)

In your letter dated December 16, 2011, you have stated and made inquiry as follows:

### **Background Facts**

Corporation is a graphic arts 'de-minimis' servicemen [sic] (as defined in **§140.120**) duly registered with the Illinois Department of Revenue since DATE, 2011. Prior to that date, CORPORATION operated under the assumption that it was not required to be registered as a de-minimis servicemen [sic] with the Illinois Department of Revenue. Further, upon learning that most of the CORPORATION's Illinois vendor/suppliers are not registered with the Illinois Department of Revenue, presumably because subcontractors are also de-minimis servicemen not required to register, CORPORATION retained the professional tax services of a licensed tax representative. Additionally, there are advantages to being registered as a de-minimis servicemen [sic]. Accordingly, as the tax representative for the CORPORATION, we were retained (amongst other things) for the specific purpose of performing a self-audit to ensure that

the accurate amount of sales/use tax is determined and paid to the Illinois Department of Revenue within a short period of time.

Further, we immediately requested and shortly thereafter received written approval from the Board of Appeals on behalf of the CORPORATION's Voluntary Disclosure Application (VDA) as submitted on Form BOA-2, in accordance with **§210.126**. See attached approval letter from INDIVIDUAL, dated DATE, 2011 as well as another letter sent via email approving a 60 day extension of time until DATE, 2012.

CORPORATION is a 'de-minimis' serviceman who produces custom printed matter at its printing facility located in CITY, IL. Further, CORPORATION produces more than 99% custom printed matter taxable under the Service Occupation Tax or the Service Use Tax as provide [sic] for under **§130.1995**, and only 1% stock printed matter, which we agree is subject to the Retailers Occupation Tax. Additionally, CORPORATION verbally contracts with other commercial printers/brokers hereinafter referred to as 'sub-contractors' [sic] who are also presumably de-minimis servicemen. These other Illinois de-minimis sub-contractors [sic] provide all the tangible personal property required to produce the custom printed matter. Furthermore, in most instances, these subcontractors are also contractually responsible for shipping the finished custom printed matter to said CORPORATION's customers, most of which are located throughout the State of Illinois. Lastly, these de-minimis servicemen sub-contractors [sic] have invoiced CORPORATION, without charging said CORPORATION the Illinois service occupation tax or the Illinois service use tax on either their actual cost price or (in the alternative) on 50% of their total invoice price to said CORPORATION. More importantly, CORPORATION always communicated that transactions were taxable, and therefore, never offered a resale certificate to any of its sub-contractors [sic]. Next, CORPORATION produces and/or sub contracts [sic] with other commercial de-minimis servicemen sub-contractors/brokers [sic] to produce custom printed matter for exempt organizations, including but not limited to municipalities and IRC 501(c)(3) organizations under Title 26 USC 501, who have provided to said CORPORATION a copy of their Illinois tax exemption identification number a/k/a an 'E number' in support of their exemption from Illinois sales & use tax.

### **Private Letter Ruling Request**

The purpose of this private letter ruling request is to secure a definitive and articulate answer including confirmation that the Illinois Administrative Code as cited by us is correct as it relates to each of the following three (3) independent situations:

- 1) Please confirm your agreement that in a situation whereby CORPORATION contracts with a sub-contractor [sic], CORPORATION has the option to self-assess the Illinois service use tax at a rate of 6.25% on 50% of the sub-contractor's [sic] invoice price, as supported by **§140.101(e) & §130.2000(c)(3)** for the time period prior to DATE, 2011, when CORPORATION was not registered. Thereafter, the SOT rate applies. Further, in this same situation, since CORPORATION is a de-minimis servicemen [sic] considered to be the end user, CORPORATION is not allowed to collect a 'tax' from its customer, as supported by **§140.108(a)(3) and §140.108(4)(d)**.

- 2) Please confirm your agreement that in a situation whereby the CORPORATION directly produces custom printed matter at its own facility, CORPORATION has the option to self-assess Illinois service use tax at a rate of 6.25% on 50% of its vendor's invoice price thereby representing the total cost of ingredients, e.g. ink, paper, envelopes, etc. i.e. the value of the tangible personal property transferred incident to the performance of services as supported by **§140.145(d) and §140.108(a)(3)** for the time period prior to DATE, 2011, when CORPORATION was not registered. Thereafter the SOT rate applies. Further, in this same situation, since CORPORATION is a de-minimis servicemen [sic] considered to be the end user, CORPORATION is not allowed to collect a 'tax' from its customer, as supported by **§140.108(a)(3) and §140.108(4)(d)**.
  
- 3) Please confirm your agreement that CORPORATION can purchase its ink, paper, and other raw material ingredients tax-free from its vendor/supplier whenever its customer is an exempt organization that has provided a valid Illinois tax exemption identification number (a/ka [sic] as an E number) to said CORPORATION who in turn provided the E number to its vendor/supplier, as required and supported by **§130.120(i) and §140.108(a)(2)(A)**.

In accordance with the requirements for requesting a private letter ruling, specifically, **III. Admin. Code 2 §1200.110**, CORPORATION through its tax representative has been authorized pursuant to a duly executed Illinois Power of Authority [sic] by said CORPORATION through the authority conferred upon its President & Sole-shareholder. Accordingly, I hereby represent that said CORPORATION is not under audit nor does said CORPORATION have any litigation pending before the Illinois Department of Revenue. Further, to the best of my knowledge, said CORPORATION, has never requested that the Illinois Department of Revenue rule on the same or similar issue for said CORPORATION.

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(The referenced tax research material is omitted.)

**DEPARTMENT'S RESPONSE:**

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department declines to issue a Private Letter Ruling. Although we are not providing you with a Private Letter Ruling, we hope the following general information will be of assistance.

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.

As a general rule, when special order or custom products are items of general utility and serve substantially the same function as stock or standard items, the products will be subject to the Retailers' Occupation Tax when sold. Items that would not be considered stock or standard items and could not be sold to someone other than the purchaser for substantially the same price would not be subject to the Retailers' Occupation Tax when sold, but would generally be subject to the Service Occupation Tax. Special order or custom print items are generally not considered stock or standard items and are generally not able to be sold to someone other than the purchaser for substantially the same price. Therefore special order or custom print items are generally subject to the Service Occupation Tax.

The Department's regulation 86 Ill. Adm. Code 130.1995 "Personalizing Tangible Personal Property" provides guidance regarding when Retailers' Occupation Tax is applicable and when Service Occupation Tax is applicable. Section 130.1995(b) provides that "[s]ellers of personalized business calling cards, greeting cards, letterheads, envelopes, labels, name plates, badges, medallions and the like do not incur Retailers' Occupation Tax liability on their receipts from such sales because they are primarily engaged in a service occupation in producing or procuring such items, which have no commercial value for their customers."

Under the Service Occupation Tax, servicemen are taxed on tangible personal property transferred as an incident of sales of service. See 86 Ill. Adm. Code 140.101, which sets forth the basis and rate of the Service Occupation Tax. Under the Service Use Tax Act, a tax is imposed on the privilege of using, in Illinois, tangible personal property that is received anywhere as an incident to a purchase of service from servicemen. See 86 Ill. Adm. Code 160.101, which describes the nature of the tax.

The liability of servicemen engaged in these transactions may result in either Service Occupation Tax liability or Use Tax liability for servicemen depending upon which tax base the servicemen choose to calculate their tax liability. Servicemen may calculate their tax base in one of four ways: 1) separately-stated selling price of tangible personal property transferred incident to service; 2) 50% of the servicemen's entire bill; 3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or 4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately-stated selling price of the tangible personal property transferred. Under a second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, the servicemen must

use 50% of the entire bill to service customers as the tax base. Both of the above stated methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

De minimis servicemen that are not otherwise required to be registered under the Retailers Occupation Tax Act may use the final method of determining tax liability. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. The servicemen are not authorized to collect "tax" from their service customers nor are the servicemen liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction-by-transaction basis.

Service Use Tax must be collected from service customers by a de minimis serviceman incurring Service Occupation Tax liability on his cost price and must be based upon the serviceman's corresponding cost price of the tangible personal property transferred. Any tax collected over this amount constitutes an overcollection of tax that must be refunded to the service customer, or if not refunded to the service customer, paid to the Department. The tax need not be separately stated on the service billing unless so requested by the service customer. 86 Ill. Adm. Code 140.109(a)(4).

A serviceman who incurs SOT on his or her selling price is authorized to claim any exemption provided for in the Service Occupation Tax Act. For example, he or she may claim the interstate commerce exemption or accept various exemption certificates from his or her customers (e.g., Certificates of Resale, exemption identification numbers). 86 Ill. Adm. Code 140.106(d). A de minimis serviceman incurring Service Occupation Tax liability on his or her cost price also is authorized to claim any of the various exemptions provided for in the Service Occupation Tax Act. For example, he may claim the interstate commerce exemption or accept various exemption certificates from his customers (e.g., he can accept Certificates of Resale). 86 Ill. Adm. Code 140.109 (a)(3). The Department has also determined that a de minimis serviceman incurring a Use Tax liability may claim any of the exemptions, except as provided in subsection (a)(2)(C), authorized under the Service Occupation Tax Act. De minimis servicemen incurring Use Tax liability may likewise claim the interstate commerce exemption, which is more fully explained at 86 Ill. Adm. Code 130.605. 86 Ill. Adm. Code 140.108(a)(2)(B).

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

RSW:msk