

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.)

August 20, 2012

Dear:

This letter is in response to your letter dated July 25, 2012, 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:

Thank you for the GIL issued on June 15, 2012 (copy attached), we appreciate that information. The Department's Response on page 5 referred us to ST 08-0003-PLR. The language from that PLR was helpful. However, in looking at Section 5K, which was cited and influenced the outcome of that PLR, I find that Section 5K is titled "Enterprise Zone Building Materials Exemption".

My next step was to ascertain whether the business location CITY1, IL which was the subject matter of this GIL was located in an Enterprise Zone. I contacted the City of CITY2 and Counties of COUNTY1 and COUNTY2 Enterprise Zone. They went out of their way to research the specific business location in CITY1, and sent me a map showing that this location is definitely NOT in an Enterprise Zone. Accordingly, Section 5K will not apply to this transaction.

My reason for writing again, then, is to ask if you could comment on a PLR or prior GIL which is not dependent on business location (in other words, how would this transaction be taxed with the same set of facts as before, but with the additional information that the facility is NOT in an Enterprise Zone)?

DEPARTMENT'S RESPONSE:

In your letter dated May 11, 2012, you inquired whether certain tangible personal property (a tank) was permanently affixed to real estate. In our response dated June 15, 2012, we referred you to ST 08-0003-PLR and quoted a portion of the language from the private letter ruling. Although the issue in that letter was whether the tangible personal property was permanently affixed to real estate for the

ST 12-0048-GIL

August 20, 2012

Page 2

purposes of Section 5k of the Retailers' Occupation Tax Act, the analysis is applicable for determining whether the tangible personal property is permanently affixed to real estate by a construction contractor for Use Tax liability purposes.

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.

Very truly yours,

Richard S. Wolters
Associate Counsel