

ST 13-0001-PLR 07/31/2013 GOVERNMENTAL BODIES

Generally, a government contractor who purchases items to fulfill his obligations under a contract with a governmental unit purchases those items for use. See, U.S. v. New Mexico, 455 U.S. 720, 102 S. Ct. 1373 (1982). However, if the contract with the governmental unit explicitly requires the contractor to sell those items to the governmental unit, the purchase of those items by the contractor can be structured as purchases for the purpose of resale to the governmental unit. See 86 Ill. Adm. Code 130.2076. (This is a PLR).

July 31, 2013

Dear:

This letter is in response to your letter dated November 3, 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](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

Requested Ruling:

COMPANY is requesting a ruling on whether purchases made by COMPANY in performance of the contract between COMPANY and the VILLAGE are exempt from Retailers' Occupation Tax.

Statement of Facts:

On MONTH X, 20XX COMPANY entered into an agreement to perform operations, maintenance and maintenance services for the VILLAGE, Illinois wastewater systems.

COMPANY makes repairs, manages a pre approved capital budget and maintains accounting of all repairs, maintenance and capital expenditures. As the contractor in the agreement COMPANY has the ability to alter the project in order to deliver exemplary services. However, any expenditure for over \$5,000 requires the Village's approval.

COMPANY earns their agreed upon fee for its performance of the contract and incurs the cost for all repair, maintenance and capital expenditures. Expenditures are invoiced backed to the VILLAGE on a monthly basis.

Position sought after:

COMPANY holds the position that the purchases made by COMPANY on behalf of the VILLAGE wastewater contract are tax exempt. This position is held due to the fact that the purchases are being made for resale to the VILLAGE.

In normal course of business vendors are able to pass on their tax exempt certificate directly to COMPANY. However being that this contract is with a state agency there is no certificate the VILLAGE is able to supply to COMPANY. COMPANY must apply for the resale certificate directly.

The following code section supports COMPANY position:

Illinois Administration Code Title 86 Part 130 Subpart N Sales for Resale Code 130.2076, Sales to Purchasers Performing Contracts with Governmental Bodies.

- a) Generally, a government contractor who purchases items to fulfill his obligations under a contract with a governmental unit purchases those items for use. See, U.S. v. New Mexico, 455 U.S. 720, 102 S.Ct. 1373 (1982). However, if the contract with the governmental unit explicitly requires the contractor to sell those items to the governmental unit, the purchase of those items by the contractor can be structured as purchases for the purpose of resale to the governmental unit. Sales of tangible personal property to the contractor in this situation are exempt from Retailers' Occupation Tax as sales for resale if the following conditions are met:
  - 1) There is a contract between the purchaser and the governmental body that requires the purchaser to provide tangible personal property to the governmental body.
  - 2) The contract is specific in documenting a sale of tangible personal property from the purchaser to the governmental body. The contract must specify that the tangible personal property is transferred to the governmental body. However, the contract does not have to be item specific. For example, a statement that title to all of the tangible personal property that is purchased shall pass to the governmental body is sufficient. The transfer may be immediate or subsequent to the completion of the contract.
- b) The exemption in subsection (a) above applies to tangible personal property that is used or consumed in the performance of a contract with a governmental body and to which title passes to the governmental body under the terms of the contract. For example, the exemption applies to consumable supplies, such as fuel, that a purchaser uses to fulfill the contract with the governmental body so long as the conditions set forth in subsection (a) are met.
- c) A supplier claiming exemption shall have among his records a Certificate of Resale from the purchasing government contractor that conforms to the requirements set forth in Section 130.1405.

Opposing Rulings:

None

Attachments:

Regulation Illinois Administrative Code 130.2076

Copy of the Agreement for operations, maintenance, and management services for the VILLAGE's Wastewater Treatment Facility, Lift Stations and Storm Water Pump Stations.

Statements:

To the best of our knowledge the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor. Nor has the taxpayer previously submitted the same or a similar issue to the Department and withdrew it before a ruling letter was issued.

There are not any trade secrets included in this request.

Thank you in advance for your consideration of this matter. Any further questions or comments can be directed to me at the address listed above or via direct dial at XXX.

**DEPARTMENT'S RESPONSE:**

Generally, a government contractor who purchases items to fulfill his obligations under a contract with a governmental unit purchases those items for use. See, U.S. v. New Mexico, 455 U.S. 720, 102 S.Ct. 1373 (1982). However, if the contract with the governmental unit explicitly requires the contractor to sell those items to the governmental unit, the purchase of those items by the contractor can be structured as purchases for the purpose of resale to the governmental unit. 86 Ill. Adm. Code 2076 Sales to Purchasers Performing Contracts with Governmental Bodies.

The rule states that "sales of tangible personal property to the contractor in this situation are exempt from Retailers' Occupation Tax as sales for resale if the following conditions are met:

- 1) There is a contract between the purchaser and the governmental body that requires the purchaser to provide tangible personal property to the governmental body.
- 2) The contract is specific in documenting a sale of tangible personal property from the purchaser to the governmental body. The contract must specify that the tangible personal property is transferred to the governmental body. However, the contract does not have to be item specific. For example, a statement that title to all of the tangible personal property that is purchased shall pass to the governmental body is sufficient. The transfer may be immediate or subsequent to the completion of the contract.

The exemption applies to tangible personal property that is used or consumed in the performance of a contract with a governmental body and to which title passes to the governmental body under the terms of the contract.

The Department has reviewed the contract between COMPANY and the Village. The contract does not contain a provision that states that the title to the tangible personal property passes to the Village. The requirements of the rule are not met. Therefore, the tangible personal property identified in the contract cannot be purchased tax free under Section 130.2076 as a sale for resale.

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I direct your attention to 86 Ill. Adm. Code 130.2075 Sales To Construction Contractors, Real Estate Developers and Speculative Builders, specifically, paragraph 1 of subsection (d). ("Sales of materials to construction contractors for incorporation into real estate owned by . . . governmental bodies, are exempt from Retailers' Occupation Tax and Use Tax.) Such tax-exempt sales must be documented in accordance with subsection (d).

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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  
Chairman of PLR Committee  
Sales and Excise Taxes