

This letter concerns sales for resale. See 86 Ill. Adm. Code 130.1401. (This is a GIL.)

January 9, 2013

Dear:

This letter is in response to your letter dated October 15, 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:

After discussions with ILDR employees regarding the state issue, they suggested this letter to get clarification.

About 30 times a year a farmer sells a live cow to a family or a restaurant. The cow is delivered to an independent, federally certified processor who butchers the cow into meat packaged as the buyer wishes. The buyer writes one check to the farmer for the live cow and a separate check to the processor of the cow. Does the farmer owe sales tax? We believe that the sale of the cow to the restaurant should be exempt from sales tax since the restaurant in turn sells the meat to its customers.

The sale to the household should be exempt from sales tax under a number of rationales:

- Occasional sale. These sales constitute a very small percentage of the farmer's total sales, the farmer does not advertise or solicit such sales and he does not have a particular place from which customers are engaged and sales occur.
- 505 ILCS 70/1. If the sales are not occasional sales, then the sales must be "in any place or market where such articles are usually sold..." and thus should be exempt under the statute.

We believe the sales to household should be exempt from sales tax; however, if they are not, would the rate be the 1.25% sale of food?

We would be happy to answer any questions or provide any additional information. Thank you for your help and we look forward to your response at your convenience.

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. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. The retailer must pay Retailers' Occupation Tax to the Department based upon its gross receipts, or actual amount received, from the sale of the tangible personal property. 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 35 ILCS 105/3; 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 retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

When a person purchases items of tangible personal property with the intention of reselling them to purchasers for use or consumption, that person engages in making retail sales of tangible personal property. This makes the initial purchase a purchase for resale, and the subsequent sale is a taxable sale at retail subject to Illinois Retailers' Occupation and Use Tax liabilities. See 86 Ill. Adm. Code 130.201 and 130.210. For general information regarding resale certificates, the Department's regulation for resale certificates, "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale," is found at 86 Ill. Adm. Code 130.1405.

Livestock producers who sell livestock to restaurants that resell the meat obtained from that livestock to their customers for use and consumption would generally be considered to be making sales for resale. The sales by those livestock producers of livestock to consumers do not qualify as isolated or occasional sales because those livestock producers are engaged in selling livestock. A person engaged in the selling of livestock can only make wholesale or retail sales of such livestock.

The Department's regulation regarding the appropriate tax rates for food can be found at 86 Ill. Adm. Code 130.310. Food that is to be consumed off the premises where it is sold (other than alcoholic beverages, candy, soft drinks, and food that has been prepared for immediate consumption) is taxed at the State rate of 1% plus applicable local taxes rather than the 6.25% general State merchandise rate. Retail sales in the situations you describe generally would qualify for the low (1%) State rate of tax.

Farmers, fruit and vine growers and gardeners should review the Farm Products Marketing Act. The Act provides farmers, fruit and vine growers and gardeners the right to make certain sales of produce from their farm, orchard vineyard and garden without paying any State, city or county tax. 505 ILCS 70/1. See *Pedigo v. Department of Revenue*, 105 Ill. App. 3d 759, 434 N.E. 2d 860 (4th Dist. 1982).

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.

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Very truly yours,

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