

This letter addresses the requirements for a certificate of resale. *See* 86 Ill. Adm. Code 130.1405 (This is a GIL.)

March 7, 2014

Dear Xxxx,

This letter is in response to your letter dated November 12, 2013, 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:

We are a manufacturer of heating, ventilating and air conditioning equipment. We have plants in STATE1, STATE2, STATE3 AND STATE4. We have service locations throughout the United States and are registered to collect sales tax in every state.

We sold some equipment to COMPANY B, a minority company located in CITY, Illinois. This company is only acting as a pass through so that the job has minority on it. They are not doing any of the installation. They basically receive the invoices, add a percentage to them as their “fee” and pass them onto the general contractor who pays for them. So we received the purchase order from COMPANY B and invoiced COMPANY B.

Our customer, COMPANY B submitted a resale certificate listing the general contractors (COMPANY C) Illinois Resale Number (see attached). When we asked them for a resale certificate listing their Illinois resale or retailer number, they told us they are not registered with the state of Illinois, nor do they have to be and that they do not need to present us with any exemption documentation due to the fact that they are purchasing under the “minority participation program”.

I emailed the Illinois Department of Revenue asking for more information on this program as it is the first I’ve heard of it and I needed to see what we needed to be able to exempt the sale from the Illinois sales tax as the customer has paid the invoice less the sales tax amount. I was advised to write to you for the answers to my questions:

1. What is the minority participation program?

2. Can we accept a resale certificate from someone other than who we sold to (remember COMPANY C did pay for the equipment but we did not bill them due to the purchase order was from COMPANY B)
3. What documentation can an unregistered company provide in order to purchase tax exempt
4. Is sales tax due from COMPANY B if they cannot provide us with a valid resale certificate (the job is not for an exempt entity)
5. How can a company have a physical location and not be registered with the state of Illinois

Currently this company owes us \$XXXX worth of sales tax. We just want to know how to handle the situation from here. If there is documentation they can provide to purchase exempt from the sales tax, or documentation from the state stating that the sales tax is due that we can present to them.

I appreciate your assistance in this matter. If you have any questions or need any more information from me to be able to assist us, please contact me at XXX-XXX-XXXX. I can also be reached by fax at XXX-XXX-XXXX or by email at XXXXXXXXX.

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. 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. 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.

The Retailers' Occupation Tax Act does not contain any exemptions for "minority purchase programs." Please note that this response is limited to the application of the Retailers' Occupation Tax Act. Local governments may administer other programs which may have provisions about minority participation, but there is no state sales tax exemption for "minority participation programs." We suggest contacting the Illinois Department of Commerce and Economic Opportunity for more information about such programs.

The exact nature of the transaction is not clear from the limited information in your letter. However, based on the representations made in your letter, it appears that COMPANY B purchased equipment from you for resale to its general contractor. COMPANY B must present a valid Certificate of Resale to you, if not you must collect tax on the sale. Sales for resale must be properly documented or sellers must charge tax. Mere statements by sellers that property was sold for resale will not be accepted by the Department without corroborative evidence. Certificates of Resale may be made a part of purchase orders signed by the purchaser.

A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will

accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. Please note that the certificate must be signed by the individual making the purchase. The registration number on the certificate must also be that of the purchaser. Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale (Section 2c of the Act). In addition to the statement, a Certificate of Resale must contain:

- 1) the seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certificate of Resale to Out-of-State purchaser:
 - a) purchaser's registration number with the Illinois Department of Revenue; or
 - b) purchaser's resale number issued by the Department of Revenue; or
 - c) a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

The statute and the regulations state that the certificate must have the purchaser's name, address, and registration or resale number. See 86 Ill. Adm. Code 130.1405. An agent of the purchaser may sign the certificate, but the information contained on the certificate should otherwise be the purchaser's. If a purchaser presents correct information on a resale certificate showing that he/she is an agent of a principal, sellers will not be held liable. The certificate you submitted is unclear because we cannot determine the nature of the transaction.

Your letter mentions that the equipment will not be installed by COMPANY B. If items are purchased for installation, they cannot be purchased for resale. In that case, tax would be due. Under Illinois law, a person who takes tangible personal property off the market and converts it into real estate is deemed a construction contractor and is the legal end-user of the tangible personal property. The construction contractor, as the user, incurs Illinois Use Tax and local Retailers' Occupation Tax reimbursement liabilities when the tangible personal property that will be converted into real estate is purchased from registered Illinois suppliers. If such items were purchased from suppliers that did not collect the tax, the person who converts the tangible personal property into real estate is required to self-assess and remit the Use Tax to the Department based upon the cost price of the property. For information on construction contractors, see 86 Ill. Adm. Code 130.1940 and 130.2075.

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,

Cara Bishop
Associate Counsel

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