ST 14-0018-GIL 04/04/2014 GROSS RECEIPTS
This letter discusses the rules regarding handling and installation charges. *See* 86 Ill. Adm. Code 130.410. *See also* 86 Ill. Adm. Code 130.415 and 86 Ill. Adm. Code 130.450. (This is a GIL.)

April 4, 2014

Dear Xxxx:

This letter is in response to your letter dated December 23, 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:

> COMPANY is a corporation operating under an FEIN of XX-XXXXXXX. We also operate under a trade name of COMPANY 2. We are requesting a tax determination letter on two topics: labor/installation and shipping/handling charges.
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> We have a vendor, COMPANY 3, that is trying to charge us sales/use tax on installation/labor as well as shipping and handling. On the actual invoice (attached for your convenience), both installation/labor and shipping/handling are separately listed. It is our understanding that, if listed separately, we are not responsible for remitting sales/use tax on these two types of services. Further, COMPANY 3 delivers all of the materials to our facility at the time of installation.
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> We've had our understanding confirmed each time we've called the State of Illinois sales tax department (which has been a total of four times on this topic). In order to have these tax billings removed from our account, COMPANY 3 is requesting a determination letter.
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> We attached a copy of the invoice in question (there are more than just one, but your answer to this invoice will clear up the remaining items as well) and highlighted the installation/labor and shipping/handling charges in yellow.
>
> Thank you in advance for your assistance. If you require any additional information, please feel free to reach me via phone at xxx.xxx.xxxx x:xxx or via email at xxxx@xxxxx.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property for use or consumption. Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. Section 1 of the Retailers' Occupation Tax Act defines the term, "selling price," as the "consideration for a sale valued in money … and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever…." See 35 ILCS 120/1. As indicated by this definition, a retailer's cost of doing business is not deductible from his or her gross receipts. This principle is articulated in Section 130.410 of the Department's rules, enclosed. (86 Ill. Adm. Code 130.410) This rule states that in calculating Retailers' Occupation Tax liability, "labor or service costs" . . . "overhead costs" . . . "or any other expenses whatsoever" are not deductible from gross receipts. The rule provides that these costs of doing business are an element of the retailers' gross receipts subject to tax even if separately stated on the bill to the customer.

If a seller delivers the tangible personal property to the buyer, and the seller and the buyer agree upon the transportation or delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the "selling price" of the tangible personal property personal property which is sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his or her tax liability. See the Department's regulation at 86 Ill. Adm. Code 130.415(d).

A separate listing on an invoice of such charges is not sufficient to demonstrate a separate agreement. The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price is a separate and distinct contract for transportation or delivery. However, documentation which demonstrates that the purchaser had the option of taking delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice. Note, as stated in Section 130.415 of the Department's regulations, if the charges for transportation or delivery exceed the cost of delivery or transportation, the excess amount is subject to tax. For further information, see *Nancy Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E.2d 926 (2009).

Generally, labor is not taxable unless you transfer tangible personal property incident to a service. See 86 Ill. Adm. 140.101. In some cases, labor may be taxable. When you sell tangible personal property and perform labor associated with that property, the taxability hinges on whether the labor was separately contracted for. Section 130.450 (86 Ill. Adm. Code 130.450) states that "[w]here the seller engages in the business of selling tangible personal property at retail, and such tangible personal property is installed or altered for the purchaser by the seller (or some other special service is performed for the purchaser by the seller with respect to such property), the gross receipts of the seller on account of his charges for such installation, alteration or other special service must be included in the receipts by which his Retailers' Occupation Tax liability is measured, if such installation, alteration or other special service charges are included in the selling price of the tangible personal property which is sold." This rule goes on to say that that the fact that the special services are billed separately from the charge for the property sold does not change this result.

Section 130.450 goes on to say that if the seller and the buyer agree on the special service charges separately from the selling price of the property, then those charges are excluded from Retailers' Occupation Tax. Simply stating the fees separately does not change the facts of the sale. In sum, in accordance with Sections 130.415 and 130.450, delivery and installation fees are generally

subject to Retailers' Occupation Tax as part of gross receipts unless it can be shown that they were contracted for separately. The fact that the fees are listed separately does not, as indicated above, remove it from the purview of the Retailers' Occupation Tax.

We cannot tell from the invoices that you have provided whether some of the items that are installed are permanently affixed to real property. If a person or business enters into a contract to permanently incorporate tangible personal property into real estate, then it would be acting as a construction contractor. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. Persons from other states who act as construction contractors in Illinois by permanently affixing tangible personal property to real estate owe Illinois Use Tax on the cost price of the tangible personal property affixed to that real estate.

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as "sales tax," but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor's part.

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,

Cara Bishop
Associate Counsel

CB:lkm