

ST 15-0010-GIL 01/12/2015 SALE FOR RESALE

This letter addresses sales for resale and drop shipments. See 86 Ill. Adm. Code 130.1405 and 86 Ill. Adm. Code 130.225. (This is a GIL.)

January 12, 2015

Dear XXXX:

This letter is in response to your letter dated October 23, 2014, 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 electronic products and in the normal course of business request a resale certificate from customers. One customer sent us a package of documents (which I have enclosed) in lieu of a resale certificate and we needed to know if this is an acceptable documentation of sales tax exemption for our customer.

Basically the situation is that we (an out of state seller)- are selling our products to COMPANY in [STATE 1] (they do not have a Illinois resale number). They are reselling to ABC in [STATE 2] (they do have an Illinois resale # which we have verified) who is then reselling to XYZ in Illinois. Our customer, COMPANY, has asked us to drop ship our products directly to XYZ in Illinois.

I spoke to the Illinois Department of Revenue call center and while they thought that under 130.225 we would not need to collect sales tax from our customer as ultimately it would be the responsibility of the second reseller, ABC (with a Illinois resale number) to collect sales tax. They could not provide us with anything in writing however, so suggested we

write your office. I appreciate your response letting us know whether that is the case and that the documentation we received is sufficient.

DEPARTMENT'S RESPONSE:

The Department's regulations entitled "Drop Shipments," found at 86 Ill. Adm. Code 130.225, and "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale," found at 86 Ill. Adm. Code 130.1405, explain in detail the Department's position on the acceptance of Certificates of Resale by sellers from out-of-State purchasers.

A drop-shipment situation is normally one in which out-of-State purchaser (Purchaser) makes a purchase for resale from a company (Company) which is registered with Illinois and has that Company drop-ship the property to Purchaser's customer (Customer) located in Illinois. For purposes of this discussion, it is assumed that Purchaser is an out-of-State company that is not registered with the State of Illinois and does not have sufficient nexus with Illinois to require it to collect Illinois Use Tax.

Company, as a seller required to collect Illinois tax, must either charge and collect tax or document appropriate exemptions when making deliveries in Illinois. In order to document the fact that its sale to Purchaser is a sale for resale, Company is obligated by Illinois to obtain a valid Certificate of Resale from Purchaser. See 86 Ill. Adm. Code 130.1405. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. In addition to the statement that the property is being purchased for resale, 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; and
- 5) Registration Number, Resale Number, or a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

The Department provides a standard form for documenting sales for resale. This form can be obtained from the Department's website.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (*i.e.*, it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided

the above stated conditions are met. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

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. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois. The risk run by a retailer in accepting such other documentation and the risk run by purchasers in providing such other documentation is that an Illinois auditor is more likely to require that more information be provided as evidence that the particular sale was, in fact, a sale for resale.

In sum, a valid resale certificate must contain all of the information required in 86 Ill. Adm. Code 130.1405. For your reference, this information is also listed above. It appears that the certificate that the purchaser provided to you does not have all of the required information filled in. If you choose to accept alternate documentation as proof that the sale is for resale, it is possible that an auditor could require additional information to rebut the presumption that the sale is not for resale.

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

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