

ST 15-0011-GIL 01/30/2015 SALE OF SERVICE

Retailers' Occupation and Use Taxes do not apply to sales of service. The Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. (This is a GIL.)

January 30, 2015

Dear Xxxx:

This letter is in response to your letter dated January 22, 2015, 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 [STATE 1] Limited Liability Company with our headquarters located in Illinois. We are registered for sales tax with the state of Illinois as well as many other states and seek guidance on how to treat the taxability of a direct mail marketing campaign that was recently offered to our dealers in Illinois.

We partnered with an advertising agency located in [STATE 2] to offer a limited-time direct mail campaign for our dealers located throughout the United States. Our dealers will provide the zip codes in which to send the mailings to and how many addresses to include within those zip codes. This information will be given to the advertising agency in order for them to mail postcards to residential addresses within the provided zip codes. The postcards will be printed by a representative of the advertising agency. The postcards feature a common marketing message created by our company COMPANY, plus unique information about each dealer that may include the dealer's contact information.

The advertising agency billed COMPANY a lump sum for printing and mailing services. This charge did not include state sales tax. We will subsequently bill each dealer an appropriate amount based on the number of postcards they requested, however we will split 50% of the cost with the dealer. As an example, a dealer with a direct mail campaign cost of \$1,000 will be billed \$500 by COMPANY.

Our company does not have sufficient information to determine whether the advertising agency located in [STATE 2] is registered for, or subject to, Illinois tax, or how they

handle such sales for Illinois tax purposes if they are subject. With the information provided does Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax apply to the direct mail campaign for our company or for our Illinois dealers? If tax does apply to either party, how should the amount subject to tax be determined and to whom should pay the tax?

DEPARTMENT'S RESPONSE:

We cannot provide you with a specific answer to your questions without reviewing invoices for the products/services that you buy and sell. In addition, without reviewing your specific contractual obligations with the third-party advertising service, and without knowing the registration status of the servicemen involved, the Department is without sufficient information to provide you with a specific response. However, I hope the following information regarding Retailers' Occupation Tax, Use Tax, Service Occupation Tax and Service Use Tax is helpful.

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 35 ILCS 120/2; 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 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 purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

Retailers' Occupation and Use Taxes do not apply to sales of service. The Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If the transactions you are inquiring about do not involve the transfer of any tangible personal property to your company, then they generally would not be subject to Service Occupation Tax or Service Use Tax.

It is possible that the scenario you have described could be considered a service transaction that may result in either Service Occupation Tax or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. For general information, see 86 Ill. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

A serviceman's liability may be calculated in one of four ways: 1. Separately stated selling price of tangible personal property transferred incident to service; 2. 50% of the serviceman's entire bill; 3. Service Occupation Tax on the serviceman's cost price if he is a registered de minimis serviceman; or, 4. Use Tax on the serviceman's cost price if he is a de minimis serviceman not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale price of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the serviceman's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106. These methods result in the customer incurring a Service Use Tax liability. See 86 Ill. Adm. Code 160.101.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred incident to the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen do not have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. This method also results in the customer incurring a Service Use Tax liability.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108. Under this method the customer incurs no Service Tax liability.

You appear to be describing a multi-service situation. However, without additional information regarding these transactions, we are unable to verify this. We hope the following information is helpful. When a serviceman contracts out all or a portion of the service that he will provide, he is acting as a primary serviceman in a multi-service situation. As a primary serviceman, he engages the services of a secondary serviceman in order to obtain all or part of the product and services desired by the service customer. Whether the primary and secondary servicemen are registered or de minimis will determine what type of tax will be incurred as well as who will incur the tax. See 86 Ill. Adm. Code 140.145 for the ways in which servicemen incur tax in multi-service scenarios. Depending on whether each of the servicemen are registered servicemen in Illinois, 86 Ill. Adm. Code 140.145(c) may apply, and certificates of resale may be given for purchases of services involving the transfer of tangible personal property which will be transferred incident to a subsequent sale of service.

We also cannot determine, based on the limited information contained in your letter, whether any sales are made into interstate commerce. An exemption is available for servicemen on property resold as an incident to a sale of service under an agreement by which the serviceman is obligated to make physical delivery of the goods from a point in this State to a point outside this State, **not to be returned to this State**, provided such delivery is actually made. See 86 Ill. Adm. Code 140.501(b). Please note unregistered de minimis servicemen may also claim the interstate commerce exemption. See 86 Ill. Adm. Code 140.108(a)(2)(B).

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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