

ST 15-0021 GIL 03/18/2015 SERVICE OCCUPATION TAX

The Service Occupation Tax is a tax imposed upon servicemen engaged in the business of making sales of service in this State, based on the tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

March 18, 2015

Dear XXXX:

This letter is in response to your consumer fraud complaint dated December 18, 2014, that the Illinois Attorney General's Consumer Fraud Unit forwarded to the Illinois Department of Revenue for a response. 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 complaint, you referenced an attached letter in which you stated as follows:

That on DATE, you made 70 copies at a COMPANY store located at ADDRESS, CITY, STATE, and you were charged \$0.56 for Illinois sales tax. You believe that COMPANY should not be charging tax because Illinois does not collect sales tax for services.

You sent a copy of the referenced letter to the Illinois Attorney General, asking for a determination as to whether "copying is subjected to state sales tax."

DEPARTMENT'S RESPONSE:

It is true that Retailers' Occupation and Use Taxes do not apply to sales of service. However, 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.

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.

Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. In Illinois, sales of copies have been determined to be sales of service subject to taxation under the principles discussed above. If customers are charged for copying by a business that incurs Service Occupation Tax, the customers incur a corresponding Service Use Tax liability, as outlined above.

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,

Debra M. Boggess
Associate Counsel

DMB:kd

Cc: NAME