

ST 15-0024-GIL 04/30/2015 CONSTRUCTION CONTRACTORS

Construction contractors are deemed end users of tangible personal property purchased for incorporation into real property, and they incur Use Tax liability based upon their cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075

April 30, 2015

Dear XXXX:

This letter is in response to your letter dated February 2, 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:

I am writing this letter in regards to obtaining formal written confirmation as to the proper recognition of sales tax in the State of Illinois. My company is a general contractor currently building a project in CITY. We procured several scopes of work in which there are out of state contractors that do not have a physical presence (office) in the State of Illinois. The work entails fabricating major equipment items out of state at their home offices/factories and shipping those items to the jobsite location for final installation. It is my understanding that the trade contractor is only responsible for remitting 6.25% sales tax in these instances, and no local sales tax is due on these transactions. This was confirmed by the DOR verbally but I was directed to request written confirmation to formally document this sales tax ruling.

We request that written confirmation be provided regarding this situation. If you have any additional questions regarding this, please contact me to discuss.

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. 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then neither Illinois Retailers' Occupation Tax nor Use Tax would apply. Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to customers incident to the services being provided, then neither Illinois Service Occupation Tax nor Service Use Tax would apply. We cannot determine your tax liability without reviewing your construction contracts. Though we cannot provide you with a specific answer based on the limited information contained in your letter, we hope you will find the following general information about construction contractors helpful.

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. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. Though there is technically no local Use Tax in Illinois, retailers located in Illinois often incur local Retailers' Occupation Tax. Retailers are authorized by statute to collect a reimbursement from customers for such local taxes. See 65 ILCS 5/8-11-1. As a result, contractors who make purchases in Illinois will incur these reimbursement charges as well. The State rate of tax on general merchandise is 6.25%. 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. If such contractors did not pay the Use Tax liability to their suppliers, those contractors must self assess their Use Tax liability and pay it directly to the Department. If the contractors have already paid a tax in another state regarding the purchase or use of such property, they will be entitled to a credit against their Illinois Use Tax liability to the extent that they have paid tax that was properly due to another state. See 86 Ill. Adm. Code 150.310.

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:kd