

ST 15-0073-GIL 11/30/2015 AGRICULTURAL PRODUCERS & PRODUCTS

If seeds sold to grow cover crops that are subsequently plowed into the soil and become part of the next crop planted, harvested and resold, such a sale would be a sale for resale. See 86 Ill. Adm. Code 130.2110. (This is a GIL.)

November 30, 2015

Dear Xxxxx:

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

On behalf of Illinois farmers and the Illinois agriculture industry, ABC is requesting a review of the applicability of the Retailers Occupation Tax Act to the sales of cover crop seeds in the agricultural sector.

During the week of July 27, 2015, ABC located in CITY, IL participated in a routine revenue audit performed by INDIVIDUAL 1, an agent of the Illinois Department of Revenue. In reviewing the sales records of ABC, he called their attention to sales of various cover crop seeds and indicated that they did not qualify for the sales tax exemption since they did not produce a crop for resale or market as defined in the Retailers Occupation Tax Act.

ABC then contacted INDIVIDUAL 2 of the Illinois Fertilizer & Chemical Association (IFCA), which represents ag retailers in the state, because they were concerned about the applicability of sales tax on cover crop seeds. They asked IFCA to assist them in determining if the Illinois

Department of Revenue (IDOR) ruling was correct in this case. The owners of ABC cooperated with the audit, and remitted a penalty of approximately \$\$\$ for uncollected tax, penalty and interest on their 20XX and 20XX sales of cover crop seeds to their farmer customers.

IFCA contacted various farm groups, including XXX, asking for our assistance in this matter. IFCA believes that many ag retailers are interpreting 86 IL Adm Code 130.2110 such that cover crop seed used in agricultural production system is not subject to tax, and thus they are not collecting or remitting tax on the sale of these seeds.

The sale of cover crops is growing substantially in Illinois, as they are being promoted by USDA, NRCS, the Illinois Department of Agriculture (IDOA) and Illinois EPA (IEPA) as a tool that farmers can utilize to help improve nutrient utilization and weed suppression in production crops that follow the cover crop. IEPA and IDA recently released the Illinois Nutrient Loss Reduction Strategy, calling for a 45% reduction in the amount of nutrients that leave the state to the Gulf of Mexico. In the strategy, cover crops are recommended as a tool to significantly reduce nutrient losses in agricultural production systems.

We recognize that in the majority of instances, the cover crop itself is not being harvested or resold. To realize the benefit of the cover crop in production agriculture systems for corn, soybeans or wheat, the cover crop must be terminated by winter kill or by herbicides in the spring prior to the planting of the subsequent crop. Cover crops provide nutrient fixation in the soil and increase the available plant food content of the soil which ultimately becomes part of the next crop. In addition, cover crops provide sequestration of nutrients remaining in the soil after the previous crop is harvested, and weed suppression due to the inability of weed seeds to germinate and compete with the growth of the cover crop. All of these attributes provided by various varieties of cover crops provide benefit to the subsequent cash crop in terms of available nutrients and reduced weed competition. Crop yields are as a result.

Given the likelihood of misunderstanding and frustration by both ag retailers and farmers throughout the state over the potential tax liability on cover crop seed sales, XXX is seeking guidance from the IDOR on this issue. We encourage IDOR to recognize that the use of cover crops is a valuable component in the production of crops for resale. In the past several years, XXX and our fellow ag organizations have hosted many seminars for our members presenting university research that demonstrates that cover crops provide measureable benefits to the crops planted after the cover crop is terminated.

Attached is an article published in the March, 2015 Journal of Environmental Quality from Illinois State University. The Illinois State University research article, called "The Efficacy of Winter Cover Crops to Stabilize Soil Inorganic Nitrogen after Fall-Applied Anhydrous Ammonia," demonstrates the ability of cover crops to increase the effectiveness of fall-applied nitrogen (N) for use by the production crop the following spring.

In our analysis, we believe that cover crops seeds, and research findings relative to the use of these seeds, are part of a production agriculture system that enhances the soil environment in terms of nutrient fixation, nutrient sequestration and weed seed suppression, thus resulting in enhanced productivity in the subsequent cash crop. Cover crops provide similar benefits as fertilizer provides in terms of the increase of nutrients to the soil, and what pesticides provide in terms of weed suppression; both of these inputs are exempt from sales tax because of their integral role in producing a crop for sale or resale.

Thank you for your consideration of our point of view, and for investigating the applicability of the Retailers Occupation Tax to this particular type of seed used in production agriculture. Please contact me, if you have questions or need additional information, or wish to talk with anyone in the research community regarding the properties of cover crops used in production agriculture.

DEPARTMENT'S RESPONSE:

Generally, when persons sell seeds to purchasers who use the seeds in raising grass, crops, or other plants that they use and do not resell, or who use the seeds to grow plants as part of a federal conservation program to prevent soil erosion, such vendors are engaged in the business of making retail sales of the seeds and are required to remit Retailers' Occupation Tax (sales tax) to the Department on their gross receipts from such sales. See 86 Ill. Adm. Code 130.2110(a). However, seeds are sometimes sold to purchasers for use as cover crops that are subsequently plowed into the soil and become part of the next crop that is planted, similar to fertilizer. Provided that this subsequent crop is in fact sold, in these cases retailers are making sales of seeds for purposes of resale and are not required to remit Retailers' Occupation Tax measured by their gross receipts from such sales. See 86 Ill. Adm. Code 130.2110(e). In this last scenario, retailers must obtain a Certificate of Resale from those purchasers. 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.

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

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