

ST 15-0084 (GIL) October 19, 2015 INTERSTATE COMMERCE

This letter discusses the Interstate Commerce exemption. See 86 Ill. Adm. Code 130.605. (This is a GIL.)

October 19, 2015

Dear Xxxxx:

This letter is in response to your letter dated July 30, 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 to request an official sales tax ruling on a scenario that I’ve run across, to ensure that I am properly complying with Illinois Sales Tax guidelines.

Facts:

- 1) Company A is a print broker that sources print related products from third-party vendors, and mails them on behalf of its customer, Company B, to recipients all over the United States (commonly referred to as direct mail). As an example, Company B wants to send printed postcards to all of its customers advertising their products. Company A handles this service from start to finish.
- 2) Company A is an Illinois company. Company B is located outside of Illinois.

- 3) Company B never takes physical possession of the printed products. Rather, Company A sources the material, ships the material to a mailing house within the State of Illinois, and the mailing house mails the materials to all of Company B's recipients. No physical possession ever takes place by Company B.

Question: Would this transaction be considered exempt from Illinois sales tax, under the Interstate Tax Exemption, outlined in Pub-104? I believe this would be a tax exempt transaction, but I would like to make sure that the State agrees with this conclusion to ensure I'm in compliance with the law.

DEPARTMENT'S RESPONSE:

The scenario about which you inquire is extremely fact dependent. As a result, we cannot provide you with a specific response based on the minimal amount of information that you provided. Notwithstanding, we hope that you find the following information helpful.

Illinois Service Occupation and Service Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon his activities. See 86 Ill. Adm. Code 140.101. 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 their sales 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. You may want to visit the Department's website at tax.illinois.gov and review letters that we have issued regarding multi-service scenarios. In the meantime, 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.

Please note, 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). However, tangible personal property that is delivered or mailed to locations in Illinois is subject to tax. Documentation must be retained to support the exemption for each delivery of tangible personal property made in interstate commerce. If sufficient documentation is not retained for a delivery, the exemption will be denied.

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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