

ST 16-0007-GIL 02/02/2016 CONSTRUCTION CONTRACTORS

This letter concerns installation of security systems. See 86 Ill. Adm. Code 130.1940. (This is a GIL.).

February 2, 2016

Dear Xxxxx:

This letter is in response to your letter dated December 21, 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](http://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 have a client that sells and installs security systems. In the past, all of the components of the installed system became realty, therefore, they handled their sales/use tax responsibilities based on construction contractor rules unless a state had special provisions for security system installations.

They now have a new customer request whereas, they install the primary system and contracts into realty as before, however, the cameras are now mobile. Mobile meaning they “clip on” at a location and can be moved around as needed.

Please advise as to how the client should handle the following situations:

- Sale and installation of main security system components (wiring, controls, etc.)
- Sale of installation of mobile cameras (not affixed permanently to realty)

- Does it matter if they handle as a lump sum v. time & material contract?

We appreciate your assistance with this matter. Please mail or email us your reply and/or contact us via email for any additional information.

#### **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. See 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 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

If a business agrees to sell and install a security system so as to make it a permanent part of a building, the business is acting as a construction contractor. A construction contractor is deemed to be the end user of the materials which it takes off the market and incorporates into real estate. The construction contractor will incur Use Tax on its cost price of the tangible personal property incorporated into real estate. When a construction contractor subsequently sells and installs property in a fashion that makes the property a real estate improvement, there is no sales tax due because sales tax does not apply to sales of real estate improvements. The contractor simply discharges the tax liability "up front" by paying tax at the time he buys the materials. See 86 Ill. Adm. Code 130.1940.

When a business sells and installs a security system, the customer incurs no Use Tax and, as a construction contractor, the business has no authority to collect Use Tax from the customer. 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 its 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 its price is a business decision on the construction contractor's part.

In the specific case of installers of security systems, Section 1 of the Retailers' Occupation Tax, in an attempt to ease the burden of administration, provides specifically that "[c]onstruction contracts for the improvement of real estate consisting of engineering, installation, and maintenance of voice, data, video, security, and all telecommunication systems do not constitute engaging in a business of selling tangible personal property at retail within the meaning of this Act if they are sold at one specified contract price." See 35 ILCS 120/1. "This provision applies to all of the items . . . even if they are not incorporated into real estate." 86 Ill. Adm. Code 130.1940(c)(3).

As a result of the statutory and regulatory language, installers of security systems are authorized to pay Use Tax to their providers on all equipment and supplies they

purchase related to the security systems they sell and install, even if some of those supplies are not technically incorporated into real estate, such as the cameras that you mention in your letter. This provision applies if the sale and installation of the security systems are packaged for one specified contract price.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.]

Very truly yours,

Cara Bishop  
Associate Counsel

CB:bkl