

ST 16-0008-GIL 02/04/2016 SALE FOR RESALE

This letter is a response to a survey regarding drop shipments. For information regarding drop shipments, see the Department's regulation entitled "Drop Shipments," found at 86 Ill. Adm. Code 130.225. (This is a GIL.)

February 4, 2016

Dear Xxxxx:

This letter is in response to your letter dated January 5, 2016, 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:

Your office was contacted in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2010, 2012, and 2014 to assist the Institute in its publication of the *SURVEY*. Forty-five states and the District of Columbia were each asked to respond to the 10 survey questions relating to third-party drop shipment transactions. All jurisdictions responded, and the results were compiled and published in the same years as stated above. Your office was sent a copy of each of the updated publications. An additional 2014 copy is enclosed for your reference.

We have had continuing favorable reaction to this publication, so much so that the Institute is going to completely reprint the survey for 2016 which will be the Thirteenth Edition. Over 740 copies of the 2014 survey were ordered by the majority of the Fortune 500 corporations and the reaction to this monographic study has been overwhelmingly favorable, with many requests for a complete update that would reflect statute and

administrative changes in the various states since the Twelfth [sic] Edition was released in June 2014.

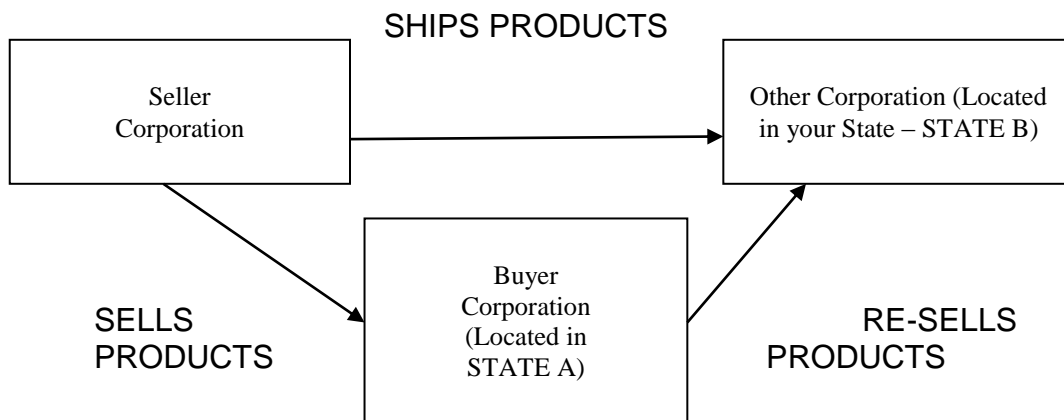
Therefore, we are contacting all of the 46 taxing jurisdictions that responded in 2014 to the questionnaire that appears on pages ii-iii of the *2014 Survey* and are asking each of them to review their responses related thereto and to respond anew to each of the 10 questions. If there are no changes, would you please advise?

We would be most appreciative if you would take the time to respond to the ten questions and furnish any updated respondent address information that is appropriate (**please include an e-mail address, if you wish**). When all of the states and the District of Columbia have replied, the information will be republished in a new booklet and you will be sent, of course, a courtesy copy. Please direct your replies to my attention at the following address where the compilation will take place (or via email).

A reply by you no later than March 11, 2016, would be most gracious on your part given the time schedule that we have allowed for information gathering and printing of this new 2016 survey. If you have questions, do give me a call. My direct dial number is: **XXX-XXX-XXXX**

Your Survey reads as follows:

FACTS...



Buyer Corporation is a registered wholesaler or retailer in State A.

Buyer Corporation has no nexus in your state and is not required to collect sales/use tax in your state (State B).

Seller Corporation has a valid exemption certificate from Buyer Corporation for State A.

Seller Corporation is required to collect sales/use tax in your state (State B).

SURVEY QUESTIONS...

1. Given that Buyer Corporation is not registered in, and has no nexus with, your state (State B), will your state recognize the sale from Seller Corporation to Buyer Corporation as a sale for resale not subject to sales or use tax in your state? (“Yes” or “No”) If the answer is yes, what documentation will your state accept to evidence that the sale from Seller Corporation to Buyer Corporation is a sale for resale?
2. Does it matter if Seller Corporation delivers in its own equipment, rather than by common carrier?
3. Do the FOB terms of sale matter in the taxation of this type of transaction? If so, please explain.
4. Does it matter if Seller Corporation ships from an inventory pool in your state as opposed to an inventory pool in another state?
5. What if Seller Corporation has a Direct Pay Certificate from Buyer Corporation instead of a resale certificate from State A?
6. If Other Corporation is a consumer, would the execution of an affidavit (see Exhibit A) from Other Corporation to Buyer Corporation, furnished to Seller Corporation, be sufficient to relieve Seller Corporation from further responsibility or liability for your state’s tax?
7. Does it matter if Other Corporation is reselling as opposed to consuming? Does it matter that other Corporation is an exempt or immune entity or purchasing for an exempt purpose other than for resale?
8. What if Other Corporation is installing the items shipped in the performance of a construction contract with an exempt agency in your state?
9. If Seller Corporation is required to remit or collect and remit the tax, is the tax measured by the price paid by Buyer Corporation, or by the price paid by Other Corporation? If measured by the price paid by Other Corporation, what is Seller Corporation required to do if it does not know, and has no right to know, the price paid by the Other Corporation?

10. What is the code section the state relies on to reach its conclusion in each answer?

DEPARTMENT'S RESPONSE:

The Department cannot approve publications other than those issued by the Department of Revenue. However, we can provide the following general information and cites to the relevant sections of the Illinois Administrative Code that apply to the questions in your survey. For example, the Department's regulations entitled "Drop Shipments," found at 86 Ill. Adm. Code 130.225, and "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale," found at 86 Ill. Adm. Code 130.1405, explain in greater detail the Department's position on the acceptance of Certificates of Resale by sellers from out-of-State purchasers.

A drop-shipment situation is normally one in which out-of-State purchaser (Purchaser) makes a purchase for resale from a company (Company) which is registered with Illinois and has that Company drop-ship the property to Purchaser's customer (Customer) located in Illinois. For purposes of this discussion, it is assumed that Purchaser is an out-of-State company that is not registered with the State of Illinois and does not have sufficient nexus with Illinois to require it to collect Illinois Use Tax.

Company, as a seller required to collect Illinois tax, must either charge and collect tax or document appropriate exemptions when making deliveries in Illinois. In order to document the fact that its sale to Purchaser is a sale for resale, Company is obligated by Illinois to obtain a valid Certificate of Resale from Purchaser. 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 (Form CRT-61 Certificate of 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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