

ST 16-0015-GIL 04/25/16 CONSTRUCTION CONTRACTORS

Persons who sell signs may incur a Retailers' Occupation Tax, Service Occupation Tax or Use Tax liability, depending upon the circumstances of the particular sale. See 86 Ill. Adm. Code 130.2155 (Tax Liability of Sign Vendors); 86 Ill. Adm. Code 140.101 (Basis and Rate of the Service Occupation Tax); 86 Ill. Adm. Code 130.1940 (Construction Contractors and Real Estate Developers) and 86 Ill. Adm. Code 130.2075 (Sales To Construction Contractors, Real Estate Developers and Speculative Builders). (This is a GIL.)

April 25, 2016

Dear Xxxxx:

This letter is in response to your letter dated March 21, 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:

Could you please forward me a Private Letter Rulings on whether (1). Towers and (2). Pylons (3) Wall signs (4) Interior signs (5) Menu board (6) Directional sign (7) Neon border tubing (8) Permit (9) Survey (10) Engineering Stamp would be considered Real Property or Personal Tangible Property and clarification of how taxes are to be applied.

Factual Background

In general, ABC, is in the business of designing, making, installing, and servicing custom signs. When a customer need[sic] a sign, ABC representative surveys the installation site and determines what type of sign is needed. ABC has artists that design the sign, once the customer accepts the proposal, ABC makes the sign from raw materials at its facility either in COUNTRY 1 or in STATE 1, USA. Materials used in the production of signs include, but are not limited to, plastic, aluminum, steel, lamps, ballasts, transformers, neon, paint, bolts, screws, and vinyl. ABC sells and install[sic] different types of signage: (1). Towers (2) Pylons. (3) Wall Signs (4) Interior signs (5) Menu board (6) Directional sign (7) Neon border tubing.

There are various methods of installation depending on the type of signs. All of the signs made by ABC are installed by sub-contractor. No signs are sold to any other contractor, fabricator, wholesaler, or retailer. ABC does not keep an inventory of completed product, because every sign is custom designed and produced.

When ABC contracts with a customer to provide custom made signs, it charges the customer **time and material that includes the sign itself, installation, freight, and if there is "Survey", "Engineering stamp fee", is a professional fee is a pass-through fee that required from the city hall to secure permit and "Permit" fee is a pass-through fee that the locality charges for a permit to erect a sign.** The customer is billed by ABC and makes no separate payment to the installer.

ABC performs services to signs, which may include repairs to broken or damaged parts, replacement of burned out bulbs, neon repair, ballasts or transformer replacements, cleaning/washing, or painting. ABC provides the labor and parts necessary to repair the sign and bills the customer accordingly.

ABC makes, installs, and services many different types of signs with varying installation methods. The most common types of signs and method of installation are as follows:

- (1) Towers: are standalone structures that are not attached to buildings. Towers are bolted into foundations and may be removed without being damaged or damaging the real estate into which they are bolted.
- (2) Advertising pylons: are free standing structures that may be bolted into a foundations[sic] or embedded or cemented into the ground. In the latter instance, the pylons may not be removed from real estate without being damaged.
- (3) Wall sign: A business sign attached parallel to the wall of a building. This definition includes painted, individual letter, and cabinet signs located on the outside of the building, whether located on a wall, mansard, awning, canopy, or window. These signs are mounted by means of screws and bolts, and removal would result in varying degrees of damage to the building fascia. Additionally, individual letters may be mounted on a raceway that is used to reduce the damage to building fascia, but may result in some damage.
- (4) Neon border tubing: This is used to accent and illuminate building fascia and is attach[sic] by means of bolts and screws around the perimeter of a building.
- (5) Interior signs: Some examples of these are Wall mart interior signs which mount on the walls showing product brand names, wall plaques, etc. This[sic] signs can be mounted with bolts and screws or with adhesive tape. Damage might or might not occur to the wall upon removal of the sign.
- (6) Menu board: A sign associated with drive through windows and oriented toward drive through window traffic. The usual installation method is to install the sign in concrete base, although they are sometimes installed using anchor bolt method.
- (7) Neon border tubing: This is used to accent and illuminate building fascia and is attached by means of bolts and screws around the perimeter of a building.

Issues

1. Whether signage bolted to a foundation should retain its character as “tangible personal property” and signage embedded in the ground should be constitute “real property” for Illinois Sales & Use Tax purposes?
2. What are the Illinois State and local sales and use tax consequences of the sale, installation and repair of the signage that qualifies as **tangible personal property** to ABC and its customers?
3. What are the Illinois State and local sales and use tax consequences of the sale, installation and repair of signage that qualifies as **real estate** to ABC and its customers?

DEPARTMENT’S RESPONSE:

The Department’s regulation “Public Information, Rulemaking and Organization” provides that “[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored.” 2 Ill. Adm. Code 1200.110(a)(4). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope however, the following General Information Letter will be helpful in addressing your questions.

Generally, the Retailers’ Occupation Tax rate and Use Tax rate imposed by the State of Illinois is 6.25%. See 86 Ill. Adm. Code 130.310. Unlike the State tax rate, local tax rates vary depending on the tax rate imposed by the local government in a particular jurisdiction. For local tax rates, see the Department’s Tax Rate Database and the Tax Rate Finder on the Department’s website at www.tax.illinois.gov. Once on the website, you will see on the left hand side a box entitled “Quick Links,” at the bottom of that box is a link entitled “Tax Rate Database.”

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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