

When persons sell tangible personal property which they are not otherwise engaged in the business of selling, such transactions may be occasional sales not subject to Retailers Occupation Tax. See 86 Ill. Adm. Code 130.110. (This is a GIL.)

December 6, 2017

Dear Xxxxx:

This letter is in response to your letter dated September 13, 2017, in which you requested 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:

Several questions have been asked of us recently by clients that I need an official answer.

- (1) Individual (not a business) purchase a piece of equipment for personal use from another individual. This is not an item that is licensed. Does the purchaser owe use tax on this item?
- (2) A corporation purchases small items on auction (on-line or otherwise) when sales tax is not charged. Does corporation owe use tax on these purchases?
- (3) Same as (2) above, but corporation is the seller. Should the corporation charge and remit sales tax?

Please help us decide these issues for our clients. If you prefer, please call for clarification.

DEPARTMENT’S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. 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. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for Retailers' Occupation Tax which they are required to and do pay to the Department with respect to the same sale. If the retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

A person, however, does not incur Retailers' Occupation Tax liability on the gross receipts from an isolated or occasional sale. See 86 Ill. Adm. Code 130.110 regarding "Occasional Sales." Consequently, the purchaser of that tangible personal property does not incur a corresponding Use Tax liability on that purchase. See 86 Ill. Adm. Code 150.101(d). As a general proposition, the occasional sale exemption is only available when a person (as defined in Section 1 of the Retailers' Occupation Tax Act, 35 ILCS 120/1) purchases an item and then, after using the item, disposes of it by selling it. See 86 Ill. Adm. Code 130.110. However, the sale will not qualify as an isolated or occasional sale if the person holds himself out as being engaged in the retail sale of that item or similar type of tangible personal property.

With respect to auctions, an auctioneer and purchaser's liability depends upon disclosure of the identity of the principal or owner of the property being auctioned. See the Department's regulation at 86 Ill. Adm. Code 130.1915. If the principal is disclosed, the tax liability attributable to him depends upon whether he is a retailer or whether he would qualify as an isolated or occasional seller of the type of property that is being sold. If the principal is not disclosed, the auctioneer is considered the seller and is subject to Retailers' Occupation Tax; the purchaser incurs a corresponding Use Tax liability.

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,

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