

ST 18-0010-GIL 03/30/2018 SERVICE OCCUPATION TAX

This letter describes how a subservice transaction is treated under the Service Occupation Tax Act. See 86 Ill. Adm. 140.145. This is a GIL.

March 30, 2018

Dear Xxxxx:

This letter is in response to your letter dated January 9, 2018, 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:

On behalf of the ASSOCIATION of Illinois, we seek clarification for our members regarding the collection of sales tax for “sublet” parts and services.

“Sublet” services in our industry are services provided by outside vendors to complete an auto repair. For example, a member is overhauling an engine and sends to an outside machine shop work for the engine’s pistons. The machine shop invoices the member auto repair shop for their labor and any parts as needed for completion of their work.

Clarification is needed as to the collection of sales tax on “sublet” parts and “sublet” labor.

Is the collection of sales tax dependent on how the charges are reflected on the invoice?

Is sales tax on the “sublet” labor handled differently than labor charges invoiced by the auto repair shop?

The ASSOCIATION of Illinois is the state’s leading trade association advocating for businesses and individuals involved in the automotive aftermarket industry. ASSOCIATION of Illinois works to promote a business-friendly environment while

maintaining the highest ethical standards. Members, including retailers, distributors, repair facilities and machine shops, are provided the tools and support they need to grow their business and meet their customers' needs.

DEPARTMENT'S RESPONSE:

Your question relates to a subservice situation. We will begin with a basic explanation of the Service Occupation Tax.

SERVICE OCCUPATION TAX

Under the Service Occupation Tax Act, a serviceman is taxed on tangible personal property transferred incident to a sale of service. The transfer of tangible personal property to service customers may result in either Service Occupation Tax liability or Use Tax liability for servicemen, depending upon which tax base they choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or (4) Use Tax on cost price if the servicemen are de minimis and are 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 sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of sales of service. They are required to collect the corresponding Service Use Tax from their customers.

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. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit tax to the Department by filing returns and do not pay tax to their suppliers. They provide suppliers with Certificates of Resale for the tangible personal property transferred to service customers.

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. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the

servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). 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.

MULTI-SERVICE TRANSACTION

With that background, we will now address multi-service situations.

Multi-service situations exist where a primary serviceman subcontracts work to a secondary serviceman. See 86 Ill. Adm. Code 140.145. A primary serviceman engages the services of a secondary serviceman in order to obtain part or all of the products and services desired by the service customer. Depending upon whether the primary and secondary servicemen are registered or de minimis will determine at what point Service Occupation Tax or Use Tax will be incurred. In multi-service situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman, or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. See 86 Ill. Adm. Code 140.301(a).

When both primary servicemen and secondary servicemen are registered, primary servicemen provide secondary servicemen with a Certificate of Resale. A primary serviceman would then incur Service Occupation Tax based upon the separately stated selling price of the property or 50% of the bill to the service customers. If the primary serviceman is registered and de minimis (that is, under the 35% threshold, or the 75% for pharmacists and printers), he may choose to remit Service Occupation Tax to the Department based upon his cost price of tangible personal property purchased from the secondary serviceman. If the cost price of the tangible personal property is not separately stated by the secondary serviceman, the cost price will be deemed to be 50% of the total bill from the secondary serviceman. Upon selling their product, servicemen are required to collect the corresponding Service Use Tax from their customers.

If an unregistered de minimis serviceman subcontracts service work to another unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman. This certification option is only available in multi-service situations when both the primary and secondary servicemen are unregistered and de minimis.

Transactions involving multiple servicemen work best if both the primary and secondary servicemen are registered. This will enable both parties to utilize Certificates of Resale. If the primary serviceman is registered and the secondary serviceman is not registered, it is possible that tax will be incurred at more than one point during the course of sale of a particular item. This will occur if the unregistered secondary serviceman has paid Use Tax with respect to an item of tangible personal property, then

transfers that property to a primary serviceman who will, in turn, incur a Service Occupation Tax liability when transferring the item to the service customer.

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,

Samuel J. Moore
Associate Counsel

SJM:bkl