

ST 18-0034-GIL 11/30/2018 CONSTRUCTION CONTRACTORS

Persons who permanently affix tangible personal property to real estate act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. 86 Ill. Adm. Code 130.1940. (This is a GIL.)

November 30, 2018

Dear Xxxxx:

This letter is in response to your letter, 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:

We are requesting clarification on our sales tax liability to the state. We are in the business of selling modular homes. We purchase homes from a factory in STATE and a factory in STATE 1. When we purchase a home we pay sales tax to the factory. We have been advised that because we are paying sales tax when purchasing the home, that tax is paid by STATE and STATE 1 to Illinois, and we are not under further obligation to pay more sales tax. When we sell a home we contract all of the work involved in placing that home. That work is completed by contractors who pay sales tax for their materials as well.

When we formed our S. Corporation, in MONTH of this year, we filled out forms that resulted in receiving an Illinois Business Authorization for COMPANY. I suppose this is why we are registered as a retailer and the IDOR is contacting me by phone to tell us our company is in collections because we have not filed the forms needed to report our sales tax. However after conversations with our accountant and the companies we are doing business with, along with a representative of the IDOR we do not think we have an obligation to file a form monthly to report sales tax.

Please advise us on how we should proceed.

DEPARTMENT'S RESPONSE:

In Illinois, construction contractors are deemed to be end users of building materials (including modular homes) that they take off the market and permanently affix to real estate. Contractors incur a Use Tax liability on their cost price of the materials permanently affixed to real estate. Illinois retailers making such sales also incur Retailers' Occupation Tax on the gross receipts from the sales of these building materials to the contractor. Thus, contractors having contracts with customers to sell and permanently affix modular homes incur a Use Tax liability on their cost price of materials permanently affixed to real estate. In these situations, the contractors' customers incur no tax liability, and the contractors have no authority to collect tax from them. If the contractors do not remit this tax to Illinois registered suppliers, the contractors must register, self-assess and remit the Use Tax to the Department. 86 Ill. Adm. Code 130.2075 is the Department's regulation concerning the taxation of construction contractors.

In contrast, if Illinois sellers of modular homes do not have contracts with the purchasers to permanently affix the home to real estate, they do not act as construction contractors and do not incur a Use Tax liability. Rather, they act as retailers in retail transactions and incur a Retailers' Occupation Tax liability and must collect the corresponding Use Tax from their purchasers unless an exemption applies (e.g., a sale for resale occurs if the purchaser buys the home for resale to a contractor).

It is unclear from your letter whether you are required as part of your agreement with the purchaser to permanently affix the modular home or obtain contractors on behalf of the purchaser. However, if you are obligated to permanently affix the modular home as part of your agreement with the purchaser, you are acting as a construction contractor and owe Use Tax on your cost price of the modular home.

The States of STATE 1 and STATE do not remit to Illinois any tax you may have paid to them on the purchase of the modular home. However, there is a possibility that the sellers of the modular homes are registered with the State of Illinois to collect and remit Use Tax on sales to Illinois purchasers. If this is the case, you may not have any further Use Tax liability on the purchase of the modular home. If the sellers are not collecting and remitting Use Tax to Illinois on the purchase of the modular homes, you must register, self-assess and remit the Use Tax to the Department. Lastly, I would also note that if you paid a tax in another state regarding the purchase or use of the modular homes, you may be entitled to a credit against your Illinois Use Tax liability to the extent that you have paid tax that was *properly due* to another state. See 86 Ill. Adm. Code 150.310.

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,

Richard S. Wolters
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