

An auctioneer acting on behalf of an unknown or undisclosed principal is responsible for Retailers' Occupation Tax on the gross receipts from the sale. However, if the auctioneer is acting on behalf of a known or disclosed principal, the sale of tangible personal property is taxable to the principal and not the auctioneer if the principal is a retailer of the tangible personal property being sold at the auction. See 86 Ill. Adm. Code 130.1915. (This is a PLR).

July 8, 2019

Re: Request for Letter Ruling Concerning COMPANY's Exemption from Illinois Retailers' Occupation Tax

Dear: Xxxx:

This letter is in response to your letter dated December 31, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

We represent COMPANY, a nonprofit corporation of and tax-exempt charitable organization (federal employer identification number ##) under Section 501(c)(3) of the U. S. Internal Revenue Code (the Illinois chapter referred to hereinafter as "**COMPANY**"). COMPANY's principal offices are located at ADDRESS.

COMPANY desires to obtain a private letter ruling from the Illinois Department of Revenue (the "**IDOR**") specifying whether and how COMPANY may claim an exemption from the Illinois Retailers' Occupation Tax (the "**ROT**") with respect to COMPANY's sale of ANIMAL, as described in detail below. This letter constitutes COMPANY's request for this private letter ruling and is organized according to the requirements of 2 Ill Adm.

Code 1200.110, which sets out the procedures for requesting such private letter rulings.

1. **Statement of the facts and other information pertinent to the request.**

PRESERVE.

COMPANY's mission, in Illinois and everywhere else it operates, is to conserve the lands and waters on which all life depends. As part of this mission, COMPANY owns and operates the PRESERVE, located at ADDRESS, Illinois, a ## acre preserve ("PRESERVE"). In YEAR, recognizing that PRESERVE offered the best opportunity to restore a large and diverse grassland, COMPANY purchased the core of the preserve, and has made additional purchases since that time resulting in the nearly ## acres it owns today.

COMPANY chose PRESERVE because it possessed numerous grassland remnants, which are intact prairie communities that have never been plowed. Grasslands are essential to combating the Earth's rising temperatures. Grasslands are a natural "carbon sink," and increase the ability of the earth's atmosphere to keep global temperature in balance. Conserving and protecting grasslands is increasingly important as the need for farmland, which displaces natural grasslands, continues to grow.

COMPANY does not merely purchase and hold places like PRESERVE, but actively restores and manages them. In addition to COMPANY staff who research and work full-time at PRESERVE, volunteers have donated more than 200,000 hours of labor to the restoration and management of PRESERVE. COMPANY personnel believe that maintaining PRESERVE as a sustainable, ecologically healthy grassland requires three essential components: climate, controlled burns and grazing.

Grasslands are more than just fields of grass; in fact, in grasslands, the forbs (or wildflowers) make up the majority of plant species diversity rather than actual grasses. However, grasses grow much more quickly than forbs. Without grazing of the grasses, grasses would eventual [sic] overtake the forbs, resulting in a less biologically diverse ecosystem. For thousands of years, ANIMALS have been a natural component of the prairie, as their grazing and wallowing (which is their rolling on the dry ground) enhances wildlife habitat for both plants and animals. In particular, when ANIMALS graze, they only eat the grasses and avoid the forbs, giving the wildflowers an advantage by reducing the grass dominance. Over time, ANIMALS grazing also manipulates the physical structure of the prairies. Some areas are short, where the ANIMALS have recently grazed, but areas where the ANIMALS have not recently grazed are taller and thicker. The mosaic of varying heterogeneous structures across the landscape is critical to ensuring a healthy prairie ecosystem. The ANIMAL herd that lives at PRESERVE is therefore a key component to COMPANY's conservation efforts at PRESERVE.

PRESERVE ANIMAL herd.

In October 20XX, ## ANIMALS were introduced to PRESERVE. The herd came from three preserves owned by COMPANY in other states. Importantly, the ANIMALS at PRESERVE are descended from a herd that was protected, at the direction of President Theodore Roosevelt, on the site of NATIONAL PARK in STATE, which means that these ANIMALS show no traces of cattle genes, which most other ANIMALS possess. Since that time, the herd has grown to over ## head. The ANIMALS breed, birth, feed, and care for themselves without human intervention. PRESERVE's ANIMAL herd roams across ## of PRESERVE's ## acres. COMPANY is committed to keeping ANIMALS as wild as possible, within the constraints of available space and human safety, and with minimal veterinary care just once a year at the fall roundup.

However, since PRESERVE is not a limitless area, COMPANY scientists and staff understand that the ANIMAL herd at PRESERVE must be capped at some point. In order to sustain the grasslands and ensure that the grassland is not over-grazed, a constant grazing-variable is deduced resulting in what is referred to as a "carrying capacity" limit on the number of head of ANIMALS at PRESERVE. The carrying capacity is the threshold number of ANIMALS the grassland can sustain without altering or destroying its present, thriving state. Any number beyond the carrying capacity results in destruction of the grasslands and is counterproductive to COMPANY's conservation efforts.

Sale of ANIMALS

In 20XX, COMPANY determined that the number of ANIMALS in the PRESERVE herd would soon exceed PRESERVE's carrying capacity. COMPANY engaged COMPANY 1 to assist COMPANY in selling some of its ANIMALS to ensure that PRESERVE's herd would not grow so large as to threaten the viability of the preserve. COMPANY's policy in Illinois for selling the ANIMALS is to give first preference to other conservation organizations who will use the ANIMALS for similar conservation purposes.¹ If the demand for ANIMALS from other similarly motivated organizations is insufficient, COMPANY will then sell ANIMALS at auction, primarily to ANIMAL breeders or meat producers, which comprise the main market for ANIMALS apart from other conservation organizations. ANIMALS are sold at market price and COMPANY uses the proceeds from the sale to fund the upkeep and operation of PRESERVE.

In November 20XX, ## of PRESERVE's ANIMALS were sold to four (4) buyers. Two (2) of the ANIMALS were sold to the COMPANY 2, a nonprofit consortium of over ## research universities that manages a ##-acre site located in CITY, Illinois that houses the U.S. government's COMPANY 2 research center. The COMPANY 2 site, like PRESERVE, maintains a herd of ANIMALS on nearly ## acres of reconstructed tallgrass prairie in order to create and maintain a healthy, sustainable grassland. The remaining ANIMALS were sold to two (2) private individuals to be used for breeding and one (1) ANIMAL meat production company. COMPANY fully expects that it will need to sell ANIMALS in future years, as its herd will continue to grow and push up against the carrying capacity of PRESERVE.

¹ The COMPANY has chapters in practically every state, and some of these chapters also engage in ANIMAL sales, but only the sales of ANIMALS by the Illinois chapter are discussed in this request, and the activities of other chapters are not relevant to this request.

2. **Contracts, licenses, agreements, instruments or other documents relevant to the request**

We have attached the invoices and sale contracts for the ANIMALS sold by COMPANY in November 20XX.

- COMPANY 2, ## ANIMALS, dated 1 November 20XX at \$\$\$;
- NAME (a breeder), ## ANIMALS, dated 26 November 20XX at \$\$\$;
- NAME 1 (a breeder), ## ANIMALS, dated 26 November 20XX at \$\$\$; and
- NAME 2 of COMPANY 3 (a meat producer), ## ANIMALS, dated 26 November 20XX at \$\$\$

We have also attached an executed power of attorney on Illinois Form 2848

3. **Tax period at issue; disclosure of pending audit or litigation.**

As noted above, COMPANY sold the ANIMALS at issue in November 20XX; accordingly, the tax periods at issue are those beginning November 20XX and continuing into the future. There is currently no IDOR audit or litigation pending against COMPANY for this issue or any other issue.

4. **Statement with respect to previous rulings.**

To the best of our knowledge, and to the best of COMPANY's knowledge, the IDOR has not previously ruled on the same or a similar issue for COMPANY or any predecessor, and neither COMPANY nor its representatives have previously submitted the same or a similar issue to the IDOR but withdrew it before a letter ruling was issued.

5. **Statement of authorities in support of an exemption from the Retailer's [sic] Occupation Tax**

We believe that the COMPANY's sale of some of the ANIMALS from PRESERVE is exempt from ROT based on the following authorities.

All of COMPANY's ANIMAL sales are exempt because the sales qualify as isolated or occasional sales.

The ROT is imposed on persons engaged in Illinois in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The ROT is not imposed on receipts from sales that are isolated or occasional. See 86 Ill. Adm. Code. 130.120(f). Occasional and isolated sales are described in 86 Ill Adm. Code. 130.110(a), which provides that since the ROT does not apply to "persons who are not engaged in the business of selling tangible personal property, persons who make isolated or occasional sales thereof do not incur tax liability." For example, as provided in 86 Ill. Adm. Code 130.110(b), "if a retailer sells tangible personal

property...which he has used in his business and no longer needs, and which he does not otherwise engage in selling, he does not incur the" ROT.

As noted above, COMPANY is not engaged in business at all, but rather is dedicated to a mission of conserving the lands and waters on which all life depends. PRESERVE is managed by COMPANY as part of that mission, specifically as a means for preserving a large and diverse grassland that offers scientific exploration, an ever-evolving ecosystem, and a place for conservation of wildlife and prairie. A critical component of sustaining PRESERVE as a grassland is the herd of ANIMALS maintained at PRESERVE. Unfortunately, and perhaps ironically as a victim of its own success, the ANIMAL herd has grown (and will continue grow) beyond the carrying capacity of PRESERVE. At this point, the excess ANIMALS are no longer needed by COMPANY as part of its conservation mission, and in fact, retaining these excess ANIMALS would threaten the sustainability of PRESERVE and COMPANY's mission. Accordingly, the ANIMAL sale in November 20XX, and those expected in the future, are a necessary byproduct of COMPANY's conservation efforts.

In summary, the ANIMAL sales that COMPANY conducted and will conduct in the future are not part of a business of selling property, or even part of COMPANY's organizational day-to-day operation, but rather are sales of ANIMALS that are no longer needed and that, if kept, would in fact undermine COMPANY's conservation efforts at PRESERVE. If, for example, the ANIMAL herd at PRESERVE did not in any particular year grow beyond the preserve's "carrying capacity," COMPANY would not expect to sell any of its ANIMALS. In other words, the excess ANIMALS, like the business owner noted above in 86 Ill. Adm. Code 130.110(b) who sold no-longer needed tangible personal property, are no longer needed and in fact pose a high risk to the ecological sustainment of the PRESERVE grassland, therefore making it [sic] essential that they be sold off. We believe that such ANIMAL sales, regardless of the identity of the purchaser, should qualify as isolated or occasional sales that are exempt from the ROT.

COMPANY sales to meat processors are exempt as sales to purchasers for resale.

As discussed above, we believe there is a strong argument that all of COMPANY's ANIMAL sales are exempt from the ROT as isolated or occasional sales, regardless of the identity of the purchaser, and we would request that relief be granted to COMPANY on that basis. However, if the IDOR determines that this relief is not appropriate, we would respectfully request that it rule, in the case of sales made to meat processors, that COMPANY's sales are exempt from the ROT as sales to purchasers for resale.

The ROT is not imposed on receipts of tangible personal property for purposes of resale in any form as tangible personal property, provided that, in the case of Illinois-based purchasers, the purchasers certify that their purchase is for resale. See 86 Ill. Adm. Code. 130.120(c). Even without this certification, sellers can rebut the presumption that a sale is not for resale with evidence that a particular sale is in fact for resale. See 86 Ill. Adm. Code. 130.210(c). Sales of tangible personal property, which property, to the extent not first subjected to a use for which it was purchased, as an ingredient or constituent, goes into and forms a part of tangible personal property subsequently the subject of a "sale at retail," are not sales at retail as defined for purposes of the ROT,

provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or byproduct of manufacturing. See 86 Ill. Adm. Code 130.201(a)(1).

In the case of ANIMAL sales to meat producers, although the ROT and the Ill. Adm. Code are not entirely clear on the point, such sales should be viewed as being for resale. This view is supported by a letter ruling granted to another taxpayer, ST 13-0001 GIL (1/9/2013), in which the IDOR ruled that a farmer selling a live cow to restaurant, where the farmer delivers the cow to an independent, certified processor who butchers the cow into meat that the buyer wishes, was not subject to ROT in respect of such sale. We would argue that COMPANY's sale of a ANIMALS from PRESERVE to a meat processor should be treated similarly, that is, as a sale for resale, and therefore exempt from the ROT on this basis as well.

COMPANY sales to ANIMAL breeders are exempt under 86 Ill. Adm. Code 130-2100(d)

As discussed above, we believe there is a strong argument that all of COMPANY's ANIMAL sales are exempt from the ROT as isolated or occasional sales, regardless of the identity of the purchaser, and we would request that relief be granted to COMPANY on that basis. However, if the IDOR determines that this relief is not appropriate, we would respectfully request that it rule, in the case of sales made to ANIMAL breeders, that COMPANY's sales are exempt from ROT under 86 Ill. Adm. Code 130-2100(d).

Under that regulation, "[f]armers or producers of breeding livestock are not liable for Retailers' Occupation Tax with respect to gross receipts realized from the sale of bulls, stallions or other servicing animals for breeding purposes." COMPANY is undoubtedly a producer (albeit unwittingly) of ANIMAL suitable for breeding, as evidenced by their sale of ANIMAL in November 20XX to two different breeders. We believe that COMPANY sales of ANIMAL to breeders, therefore, should be exempt from the ROT on this basis as well.

COMPANY sales to other conservation organizations are exempt under 86 Ill. Code 130-2005 [sic].

As discussed above, we believe there is a strong argument that all of COMPANY's ANIMALS sales are exempt from the ROT as isolated or occasional sales, regardless of the identity of the purchaser, and we would request that relief be granted to COMPANY on that basis. However, if the IDOR determines that this relief is not appropriate, we would respectfully request that it rule, in the case of sales made to other charitable or conservation organizations (such as COMPANY 2), that COMPANY's sales are exempt from the ROT under 86 Ill. Adm. Code 130-2005 [sic].

It is clear that nonprofit entities, such as COMPANY, are in fact subject to the ROT when selling tangible personal property just as a for-profit entity would be. See 86 Ill. Adm. Code 130-2005(a). Were this not the case, this letter ruling request would be unnecessary. However, there are limited exceptions to this rule, including sales made **to** nonprofit institutions.

86 Ill. Adm. Code 130-2005(d)(1) [sic] provides that “[s]uppliers of nonprofit institutions, associations and organizations do not incur Retailers’ Occupation Tax liability when they sell tangible personal property to any such purchaser for resale in any form as tangible personal property.” 86 Ill. Adm. Code 130-2005(d)(2) [sic] provides further that “[s]uppliers of such purchasers incur Retailers’ Occupation Tax liability when they sell tangible personal property to any such purchaser at retail (i.e., for use or consumption by the purchaser or to be given away by the purchaser and not for resale in any form as tangible personal property), provided that the tax does not apply to receipts received by the seller from sales of any kind made to any purchaser of this character who is able to qualify as a corporation society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, or any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers or employees and which is organized and operated primarily for the recreation of persons 55 years of age or older.” Thus, sales to a nonprofit organization may be exempt from the ROT, provided that the organization is non-profit and operated exclusively for, among other things, charitable or educational purposes. See, 86 Ill. Adm. Code 130-2005(h) [sic].

86 Ill. Adm. Code 130-2005(h) [sic] provides examples of examples of entities eligible for this exemption, and they include those operated and organized for education purposes, as well as those operated exclusively for the purpose of conducting scientific research of a character that would be beneficial to the public (held to be a charitable purpose). COMPANY 2, the final buyer of ANIMALS in November 20XX, is a nonprofit consortium of over 80 research universities with a mission akin to that of COMPANY. Accordingly, if the IDOR otherwise does not agree that COMPANY’s ANIMAL sales should qualify as isolated or occasional sales as argued above, we believe that sales of ANIMALS to COMPANY 2, and other similarly-organized and operated purchasers (to whom COMPANY intends to give preference in future ANIMALS sales) should be exempt under 86 Ill. Adm. Code 130-2005(d) [sic] as sales made to nonprofit institutions organized for charitable, educational, or scientific research purposes.

6. **Statement of authorities contrary to the taxpayer’s views.**

We have not been able to locate, and believe that there are not, any authorities contrary to COMPANY’s view as to its eligibility for an exemption from the ROT.

7. **Request for deletion of information from the public version of the private letter ruling.**

We would request that the publicly disseminated version of any private letter ruling issued to COMPANY pursuant to this request specifically not contain or otherwise conceal the identities and descriptions of the purchasers of the ANIMALS sold in November 20XX, as well as the purchase price paid for the ANIMALS.

8. **Signature of the taxpayer or the taxpayer’s representative.**

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.

The Department believes the sales of the ANIMALS to the COMPANY 2, NAME, NAME 1, and COMPANY 3 in November 20XX qualify as isolated and occasional sales and are exempt from sales tax. Because of the size of the herd, the reproductive rate of the herd, and the need for COMPANY to regularly and continually dispose of ANIMALS to sustain the grasslands and prevent over-grazing, the Department cannot conclude that future sales would be isolated and occasional sales or that COMPANY is not engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption.

As noted in your letter, some the sales may be exempt from tax based on other provisions in the Retailers' Occupation Tax Act and the Department regulations. See 86 Ill. Adm. Code 130.201 and 130.210 (sales for resale); 130.2100(d) (sellers of breeding livestock); and 130.2005(d) (suppliers of nonprofit institutions, associations and organizations). These sales should be properly documented to obtain the benefit of the exemptions.

Organizations that are recognized as non-profit under Internal Revenue Code Section 501(c)(3), are not necessarily exempt organizations pursuant to Illinois tax law. Such organizations must obtain an exemption identification number (an "E number") to qualify. See 86 Ill. Adm. Code 130.2007. Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an E number.

The E number evidences that the Department recognizes the organizations as exempt from Use Tax when purchasing tangible personal property in furtherance of their organizational purposes.

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, subject to any exemptions that may apply to the sales.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

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
Chairman, Private Letter Ruling Committee

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