

This letter discusses the Service Occupation Tax. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

December 28, 2020

NAME
ADDRESS

Dear Xxxx:

This letter is in response to your letter dated January 28, 2020, 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:

The purpose of this correspondence is to request a non-binding general information letter on behalf of COMPANY client (known as “Company”) on which Company may reply for persuasive guidance. A copy of 2 Illinois Administrative Code Section 1200.120 is attached for your review.

STATEMENT OF FACTS

The Company is a retailer of PRODUCT which are sold to primarily independent franchisees and other businesses purchased for use in manufacturing bedliners. In contrast to traditional “in place bedliners” which are purchased whole and installed into the beds of automobile trucks/vehicles, the Company’s patented PRODUCT, undergo a PRODUCT reaction process and are transformed/constitute the bedliner upon being applied to automotive beds by the independent franchises and other businesses which purchase the Company’s PRODUCT.

From a technical perspective, the mixing of PRODUCT A and PRODUCT B, respectively, is done at high pressure and polymerized through high impingement mixing. This mixing is done at high pressure and temperatures that cause an

immediate reaction and is accomplished with a specialized two component gun. This gun pressurizes PRODUCT A and B separately until it reaches the mix chamber at 2000 psi. The "collision" of PRODUCT A and B, respectively, produces a spray pattern which is well dispersed to cover a large area; with typical "gel-time", meaning the change from liquid to solid bed liner, is 3-6 seconds.

From a practical perspective, as noted above, the Company sells PRODUCT A and PRODUCT B to the dealers/independent franchisees. Each of these PRODUCT, in and of themselves, have little if no utility unless and until the aforementioned PRODUCT reaction/transformation process is complete. In practice, upon purchasing these PRODUCT (raw materials), the PRODUCT are inserted into the patented manufacturing equipment, where upon application, these PRODUCT become the hardened bedliners which chemically adhere to the beds of automotive vehicles and constitute the bedliners purchased from the franchisees/dealers. The Company's customers who purchase the PRODUCT (typically dealers and franchisees) typically invoice a separate charge for the labor to install the bedliner and a significantly higher charge for the bedliner itself.

ISSUE(S):

- 1) Does the Department concur that franchisees and independent dealerships who purchase PRODUCT (PRODUCT A and B, respectively) from the Company as outlined above can provide the Company with a sale for resale exemption certificate?
- 2) If the Department concurs that the franchisees and independent dealerships can purchase PRODUCT under a sale for resale certificate as outlined above, please confirm that provided the installation charge and charge for the bedliners as reflected on the invoices from the dealers/franchisees to the end users are separately stated, the dealer/franchisees should charge Illinois Retailers Occupation Tax (Sales Tax) on the sales of the bedliners and exempt the separately stated installation charge as per 86 Illinois Administrative Code Section 130.450.

ANALYSIS

Illinois law provides that tangible personal property (other than new motor vehicles) acquired for resale, rental, or leasing in the ordinary course of the purchaser's business is exempt from Illinois Retail Occupational Tax (Sales Tax) if the property is resold, rented, or leased in the same form in which it was purchased. See 35 Illinois Code Section 105/2. As such, the Company believes that while there is nothing expressly on point on this issue, the Company believes that dealers/franchisees who are reselling the PRODUCT, which become the bedliners, can provide the Company with a valid resale certificate in lieu of the Company charging the dealers/franchisees Retailers Occupational Tax (Sales Tax) upon the sale of the PRODUCT since the franchisees/dealers will be charging Retailers Occupation Tax (Sales Tax) on the sale of bedliners, but exempt the installation charge pursuant to 86 Illinois Code Section 130.450.

CONCLUSION

We believe that based on our analysis of Illinois law:

- i) That franchisees and independent dealerships, who purchase PRODUCT (PRODUCT A and B, respectively) from the Company as outlined above, can provide the Company with a sale for resale exemption certificate; and
- ii) That the franchisees and independent dealerships, who purchase PRODUCT under a sale for resale certificate as outlined above, provided the installation charge and charge for the bedliners as reflected on the invoices from the dealers/franchisees to the end users are separately stated, the dealers/franchisees should charge Retailers Occupational Tax (sales tax) on the sales of bedliners, but exempt the separately stated installation charge(s).

If you have any additional questions or require any additional documentation/information in order to issue your conclusions with respect to this non-binding general information letter ruling determination request(s), please contact me at NUMBER. Thanking you in advance for your assistance.

DEPARTMENT'S RESPONSE:

Retailers' Occupation Tax and Use Tax do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services (*i.e.*, servicemen) are taxed on tangible personal property transferred as an incident to sales of service. 86 Ill. Adm. Code 140.101. 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.

It appears that the dealer/franchisees buying your products are acting as servicemen when applying the products to their customers' trucks and would pay Service Occupation Tax or Use Tax using one of the four methods described above.

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

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