

Under the Retailers' Occupation Tax Act, a seller's drop shipment to a freight forwarder who arranges for property to be delivered outside of the United States not to return to the United States, and a seller's drop shipment of property to a customer in Illinois for resale are not subject to sales tax. Appropriate documentation must be obtained in support of either applicable exemption. See 86 Ill. Adm. Code 130.605 and 86 Ill. Adm. Code 130.1405. (This is a GIL.)

January 28, 2021

Dear Xxxx:

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:

I have a customer (COMPANY1), located in the state of STATE and is not registered in the state of Illinois, who is purchasing items from us (COMPANY2). We are registered for Illinois sales tax and are drop shipping our customer's orders to the state of Illinois for export out of the US.

- What is required to document sales for export out of the US? Do I need to obtain bills of lading or air waybills as described under publication 104?
- Customer has provided CRT-61 Certificate of Resale and has selected option "The purchaser is authorized to do business out-of-state and will resell and deliver property only to purchaser's located outside the state of Illinois." If the customer furnishes the CRT-61 and selects that option, do they not have to provide me with any export documents?

Please provide a written response to my questions above.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See 86 Ill. Adm. Code 130.101. In Illinois, 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. Mere possession in Illinois is considered a use. Consequently, if the purchase occurs in Illinois, the purchaser must pay the Use Tax to the retailer. Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State immediately transports the property out of this State for use outside the State. See 86 Ill. Adm. Code 130.605(a)(2). The State of Illinois has no specific exemption for purchases by foreign or domestic travelers if the property is delivered and used in Illinois. Section 130.605 identifies several exceptions to this rule.

Your letter does not contain sufficient information for us to determine whether your company is engaging in a true drop shipment. However, if your company's conduct constitutes a true drop shipment, the Department's regulations regarding Drop Shipments can be found at 86 Ill. Adm. Code 130.225. A drop-shipment situation is normally one in which an out-of-State purchaser makes a purchase for resale from a company which is registered with Illinois and has that company drop-ship the property to the purchaser's customer located in Illinois. The company, as a seller required to collect Illinois tax, must either charge and collect tax or document appropriate exemptions when making deliveries in Illinois. You have raised two possible exemptions in your letter.

In order to document the fact that its sale to a purchaser is a sale for resale, a company is obligated by Illinois to obtain a valid Certificate of Resale from Purchaser. See 86 Ill. Adm. Code 130.1405. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. In addition to the statement that the property is being purchased for resale, a Certificate of Resale must contain:

- 1) the seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) the purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing; and
- 5) Registration Number, Resale Number, or a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

If purchasers fail to provide Certificates of Resale, the sales are presumed to not be for resale and sellers would incur Retailers' Occupation Tax and would be required to charge the corresponding Use Tax to the purchasers. See Section 130.1405(d). It is possible to rebut this presumption with other evidence as set out in Section 130.1405(d).

Your letter has also raised the possibility that you are inquiring about a direct sale to a customer that will be made into international commerce. If so, please review 86 Ill. Adm. Code 130.605 for more information regarding these types of transactions. Section 130.605(d) states that the gross receipts from such sales are not subject to tax when a sale is conducted in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made. Such sales are sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax. The exemption also would apply when a seller makes delivery in Illinois to a freight forwarder who handles the arrangements for the property to be delivered outside the United States, not to be returned to the United States. 86 Ill. Adm. Code 130.605(g).

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Section 130.605(f) identifies the type of documents a seller must retain in his or her records to support such an exemption.

Either of these exemptions may be used when appropriate, and a seller must document each and obtain necessary supporting documentation as discussed above and in the Department's applicable regulations. See 86 Ill. Adm. Code 130.605(f) and 86 Ill. Adm. Code 130.1405.

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,

Alexis K. Overstreet
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