

This letter discusses remote retailers. 86 Ill. Adm. Code 131. (This is a GIL.)

January 28, 2021

Dear Xxxx:

This letter is in response to your letter dated January 4, 2021, 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 am contacting you from BUSINESS. We are an COMPANY based in STATE

I am contacting you because we have are [sic] registered in the state of Illinois as a Use Tax Permit Remote Seller with Certificate registration number xxxx-xxxx.

We have a client in Chicago, Il who we are purchasing furniture and accessories for. The Furniture is being shipped to their location and to a storage facility until they are ready to install.

We have no office or physical presence in the State of Illinois, I would like to know if we are required to collect the full sales tax rate of 10.25% or 6.25% rate as a remote seller.

DEPARTMENT'S RESPONSE:

A Remote Retailer is a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether that place of business or agent is located in Illinois permanently or temporarily or whether the retailer or subsidiary is licensed to do business in this State. A retailer that fulfills any orders from its inventory in Illinois is not a remote retailer. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105. As of January 1, 2021, a remote retailer is engaged in the occupation of selling at retail in Illinois for purposes of the Retailers' Occupation Tax Act if either of the following thresholds is met:

- A) The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or

B) The remote retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

See 35 ILCS 120/2(b); 86 Ill. Adm. Code 131.115. A remote retailer meeting either of these thresholds is liable for all applicable State and local retailers' occupation taxes administered by the Department on all retail sales shipped or delivered to Illinois purchasers. See 86 Ill. Adm. Code 131.110(a); Section 131.115(a). Sections 131.115 and 131.120 further discuss how to calculate sales to determine whether a retailer meets either of these thresholds.

You have referenced the use of a warehouse in your letter. It is unclear from your letter who has a possessory interest in this warehouse. If your company has a possessory interest in this warehouse, you are not a remote retailer. For the purposes of this letter, we assume you do not have such a possessory interest, and you are, in fact, a remote retailer.

If you are a remote retailer meeting either threshold, you are deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. State and local retailers' occupation taxes are incurred at the rate in effect at this location. See 86 Ill. Adm. Code 131.110(b).

If, pursuant to the criteria set out in Section 131.115, the remote retailer determines that its sales to Illinois purchasers did not meet either threshold, it is not required to collect and remit State and local retailers' occupation taxes. However, it may notify the Department that it wishes to change its registration status to collect and remit use tax as a courtesy to its Illinois purchasers, since those purchasers will still incur a use tax liability that they must otherwise self-assess and remit directly to the Department. See 86 Ill. Adm. Code 131.115(d). Remote retailers not required to remit State and local retailers' occupation taxes must redetermine, on a rolling quarterly basis, whether they are obligated to begin remitting State and local retailers' occupation taxes. See 86 Ill. Adm. Code 131.115(e).

Please review the criteria for determining whether your company meets either threshold set out in 86 Ill. Adm. Code 131.115. If your company meets either threshold, you must change your registration with the Department to reflect your new status and begin collecting and remitting all State and local retailers' occupation taxes in effect at the location of the Illinois purchaser. See 86 Ill. Adm. Code 131.125. However, if your company does not meet either threshold, you may continue in your current registration status with the Department and remit Illinois Use Tax as a courtesy to your customers at the rate of 6.25%.

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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