

This letter responds to an annual survey. (This is a GIL.)

Dear NAME

This letter is in response to your letter received June 14, 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:

Each year, the UNIVERSITY, in conjunction with COMPANY, collects and disseminates information regarding the tax laws of each state. The results of the annual survey are published in the GUIDE, which has been one of the premier state tax reference books for nearly 40 years.

Your assistance in the preparation of the 2022 edition is essential. Please complete the attached corporate income tax and sales tax questionnaires by August 2, 2021, and email them to E-MAIL. If your responses to last year’s questionnaire would be helpful, please let us know and we will send you a copy.

All new questions are highlighted in red font. Due to time constraints, please respond only to the new questions and to the prior year questions that require a change. All unanswered questions will be considered to have the same response as last year, unless otherwise noted.

Please acknowledge receipt of this email.

Also, please send us your responses to the following questions:

1. Who is the state respondent for the corporate income tax questionnaire?
2. Who is the state respondent for the sales tax questionnaire?
3. Do you prefer a complimentary hardcopy of the GUIDE or should we send you an access code for an eBook?

Please contact us at E-MAIL if you have any questions, and thank you for your continued support of this important tax reference book.

Sincerely,

We are unable to respond to your survey in the format provided. However, we hope you find the following information helpful.

REMOTE WORKERS. If a corporation's sole activity in your state is an employee working from home under the circumstances described below, does the activity create an obligation to collect and remit sales/use tax (check each activity that would, by itself, create sales/use tax nexus)?

- For the convenience of the employer
- For the convenience of the employee
- On a regular but temporary basis
- Occasionally and intermittently
- Permanently

- Is sales tax nexus created by an employee working from home due to COVID restrictions?
 Yes No

DEPARTMENT'S RESPONSE

Out-of-state sellers with a physical presence in Illinois have nexus with the State and incur either a Use Tax or Retailers' Occupation Tax obligation on sales made to Illinois purchasers depending on their selling activities. See 86 Ill. Adm. Code 131.107(a)(4), amended by emergency rule at 45 Ill. Reg. 9625, effective July 13, 2021. An out-of-state seller is a seller located outside Illinois but that has or maintains within Illinois, 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 seller or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such seller or subsidiary is licensed to do business in this State. However, the ownership of property that is located at the premises of a printer with which the seller has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced shall not result in the seller being deemed to have or maintain an office, distribution house, sales house, warehouse, or other place of business within this State. See 86 Ill. Adm. Code Section 131.105, amended by emergency rule at 45 Ill. Reg. 9625, effective July 13, 2021.

MARKETPLACE FACILITATORS

- When purchasing meals delivered from a restaurant, who is responsible for the collection of the tax?
 Delivery service Restaurant

- | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>▪ When purchasing tangible personal property from an online retailer through a marketplace facilitator, who is responsible for the collection of the tax?</p> <p><input type="checkbox"/> The online retailer <input type="checkbox"/> The marketplace facilitator</p> |
| <p>▪ When purchasing tangible personal property from an online retailer through a marketplace facilitator, which party may claim a bad debt deduction?</p> <p><input type="checkbox"/> The online retailer <input type="checkbox"/> The marketplace facilitator <input type="checkbox"/> Neither</p> |
| <p>▪ How are a seller's marketplace facilitator sales reported on the seller's return?</p> <p><input type="checkbox"/> A subtraction from total sales</p> <p><input type="checkbox"/> Total sales are reported net of marketplace facilitator sales</p> <p><input type="checkbox"/> Other, please describe</p> |

DEPARTMENT'S RESPONSE

Food delivery services considered to be marketplace facilitators (meeting a tax remittance threshold), must provide a certification to each food service establishment that sells over its marketplace that it assumes the rights and duties of a retailer under the Retailers' Occupation Tax Act and all applicable local retailers' occupation taxes administered by the Department. See 86 Ill. Adm. Code Section 131.107(c)(1)(C)(ii), amended by emergency rule at 45 Ill. Reg. 9625, effective July 13, 2021; See also 35 ILCS 120/2-12(7).

After January 1, 2021, a marketplace facilitator that meets either of the thresholds in Section 131.135(a) is considered a retailer engaged in the occupation of selling at retail in Illinois and is liable for all applicable State and local retailers' occupation taxes administered by the Department on all sales to Illinois purchasers made over the marketplace, including its own sales and sales made over the marketplace on behalf of marketplace sellers. See 86 Ill. Adm. Code Section 131.130(d); See also 86 Ill. Adm. Code Section 131.135(a), amended by emergency rule at 45 Ill. Reg. 9625, effective July 13, 2021.

As would otherwise be provided to the marketplace seller, a marketplace facilitator is entitled to any credits, deductions, or adjustments to the sales price. See 86 Ill. Adm. Code Section 131.145(h), amended by emergency rule at 45 Ill. Reg. 9625, effective July 13, 2021.

Marketplace facilitators shall file returns and remit tax on sales made over the marketplace to Illinois purchasers on behalf of marketplace sellers separately from any sales made directly by the marketplace facilitator itself. Marketplace facilitators must separately register with the Department to file and pay tax on their own sales; tax on those sales shall be reported and paid on a return separate from the return filed on behalf of marketplace sellers. [35 ILCS 120/2(c)]; See 86 Ill. Adm. Code Section 131.145(f), amended by emergency rule at 45 Ill. Reg. 9625, effective July 13, 2021.

[1] TAXABLE ITEMS

- | | |
|-------------------------------------------------------------------------|-------------------------------------------------------------|
| <input type="checkbox"/> Precious metals purchased for investment boots | <input type="checkbox"/> Safety equipment – Steel toe boots |
| <input type="checkbox"/> Safety equipment – Safety glasses | <input type="checkbox"/> Safety equipment – Hard hats |

DEPARTMENT’S RESPONSE

Generally, gross receipts from the retail sale of precious metals for investment purposes are subject to tax. However, gross receipts from the sales of legal tender, currency, medallions, or gold or silver coinage issued by the State of Illinois, the government of the United States of America, or the government of any foreign country, and bullion are exempt from Retailers' Occupation Tax. See 86 Ill. Adm. Code Section 130.1910(c).

Generally, gross receipts from the retail sale of safety equipment purchased are subject to tax. However, the manufacturing and assembling machinery and equipment exemption includes hand tools, protective apparel, and fire and safety equipment used or consumed within a manufacturing facility. See 86 Ill. Adm. Code 130.330(h)(2)(C).

DIGITAL ADVERTISING

- | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">▪ Does your state tax digital advertising under an excise tax separate from sales/use tax?
<input type="checkbox"/> Yes <input type="checkbox"/> No▪ If YES, what is the tax rate?▪ If YES, what is the tax base? |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

DEPARTMENT’S RESPONSE

No.

CHARGING STATIONS FOR ELECTRIC MOTOR VEHICLES

- | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">▪ Does your state have an exemption or exclusion for machinery and equipment used to equip charging stations for electric motor vehicles?
No <input type="checkbox"/> Yes <input type="checkbox"/>▪ Are the proceeds from charging stations for electric motor vehicles subject to sales/use tax?
No <input type="checkbox"/> Yes <input type="checkbox"/> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

DEPARTMENT’S RESPONSE

No.

[71] MEDICAL EQUIPMENT, SUPPLIES, AND OTHER TRANSACTIONS BY DOCTORS AND CLINICS

- Personal protective equipment – Respirators
- Personal protective equipment – Ventilators

DEPARTMENT’S RESPONSE

There is no specific exemption relating to the purchase of medical equipment, such as respirators and ventilators. However, the Retailers’ Occupation Tax Act does contain an exemption for personal property sold to a governmental body, to a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, or to a not-for-profit corporation, society, association, foundation, institution, or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older. 35 ILCS 120/2-5(11). Until July 1, 2022, tangible personal property sold to or used by a hospital owner that owns one or more hospitals licensed under the Hospital Licensing Act or operated under the University of Illinois Hospital Act, or a hospital affiliate that is not already exempt under another provision of the Retailers’ Occupation Tax Act and meets the criteria for an exemption under Section 2-9 of the Act, is exempt from taxation under the Act. 35 ILCS 120/2-9.

A medical appliance is an item that is used to directly substitute for a malfunctioning part of the human body that is lost or diminished because of congenital defects, trauma, infection, tumors or disease. A medical appliance is subject to Retailers’ Occupation Tax at the 1% rate, plus applicable local taxes. See 86 Ill. Adm. Code 130.311(e)(1).

[74] COMMON MISTAKES CORPORATIONS MAKE IN FILING RETURNS AND REMITTING TAXES

▪ What are the most common mistakes that corporations make in filing sales and use tax returns and remitting sales and use taxes? For ease of presentation in a chart, please organize your response as a bullet point list, as follows:

1.

2.

3.

and so on

DEPARTMENT’S RESPONSE

UNIVERSITY
Page 6
August 6, 2021

The Illinois Department of Revenue has identified a large number of retailers who have filed Form ST-1, with sales amounts reported on the lines used to report sales subject to Illinois Use Tax. With the enactment of the Leveling the Playing Field for Illinois Retail Act, some sales made on or after January 1, 2021, may be subject to State and local retailers' occupation tax using destination sourcing for sales made to purchasers in Illinois. See Compliance Alert 2021-05.

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,

Thomas Grudichak
Associate Counsel