

When a construction contractor permanently affixes tangible personal property to real property, the contractor is deemed the end user of that tangible personal property. As the end user, the contractor incurs Use Tax on the cost price of that tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. (This is a GIL.)

November 23, 2021

Dear NAME:

This letter is in response to your letter dated October 6, 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 represent the following companies that are involved in providing services to the telecom industry and am seeking clarification as to the tax treatment of the following services.

COMPANY1. FEIN XX-XXXXXXX
COMPANY2. FEIN XX-XXXXXXX
COMPANY3 FEIN XX-XXXXXXX

- 1) The company contracts with a cellular service provider to furnish and install transmission equipment (including any wiring, cabling, or other materials necessary for the transmission equipment to function) on new construction, i.e., cell tower, commercial building, stadium, etc. under a time and materials contract.
- 2) The company contracts with a cellular service provider to furnish and install transmission equipment (including any wiring, cabling, or other materials necessary for the transmission equipment to function) on new construction, i.e., cell tower, commercial building, stadium, etc. under a lump sum contract.

- 3) The company contracts with a cellular service provider to furnish and install transmission equipment (including any wiring, cabling, or other materials necessary for the transmission equipment to function) on an existing structure, i.e., cell tower, commercial building, stadium, etc. under a time and materials contract.
- 4) The company contracts with a cellular service provider to furnish and install transmission equipment (including any wiring, cabling, or other materials necessary for the transmission equipment to function) on an existing structure, i.e., cell tower, commercial building, stadium, etc. under a lump sum contract.
- 5) The company contracts with a cellular service provider to remove existing transmission equipment and replace it with upgraded equipment furnished by the company, for example, replacing 4G equipment with 5G equipment and to provide any wiring, cabling, or other materials necessary for the transmission equipment to function under a time and materials contract.
- 6) The company contracts with a cellular service provider to remove existing transmission equipment and replace it with upgraded equipment furnished by the company, for example, replacing 4G equipment with 5G equipment under a lump sum contract.
- 7) The company contracts with a cellular service provider to install transmission equipment provided by the cellular service provider, and to provide any wiring, cabling, or other materials necessary for the transmission equipment to function on new construction, i.e., cell tower, commercial building, stadium, etc. under a time and materials contract.
- 8) The company contracts with a cellular service provider to install transmission equipment provided by the cellular service provider, and to provide any wiring, cabling, or other materials necessary for the transmission equipment to function on new construction, i.e., cell tower, commercial building, stadium, etc. under a lump sum contract.
- 9) The company contracts with a cellular service provider to install transmission equipment provided by the cellular service provider, and to provide any wiring, cabling, or other materials necessary for the transmission equipment to function on an existing structure, i.e., cell tower, commercial building, stadium, etc. under a time and materials contract.
- 10) The company contracts with a cellular service provider to install transmission equipment provided by the cellular service provider, and to provide any wiring, cabling, or other materials necessary for the transmission equipment to function on an

existing structure, i.e., cell tower, commercial building, stadium, etc. under a lump sum contract.

- 11) The company contracts with a cellular service provider to remove existing transmission equipment and replace it with upgraded equipment furnished by the cellular service provider, for example, replacing 4G equipment with 5G equipment, and to provide any wiring, cabling, or other materials necessary for the transmission equipment to function under a time and materials contract.
- 12) The company contracts with a cellular service provider to remove existing transmission equipment and replace it with upgraded equipment furnished by the cellular service provider, for example, replacing 4G equipment with 5G equipment, and to provide any wiring, cabling, or other materials necessary for the transmission equipment to function under a lump sum contract.

In each of the scenarios above, does the use of subcontractors or acting as a subcontractor affect the tax treatment?

It is our understanding that in all of the above scenarios if we are acting as a contractor we must pay sales tax on our purchases and must charge sales tax to our customer on the charges for labor. If on the other hand, it is determined that we are selling and installing fixtures, we may purchase the fixtures without payment of sales tax, but must pay sales tax on materials used in the installation. We must charge sales tax on the selling price of the fixture and the installation labor to the customer. What we are clear on is whether we are a contractor or a retailer under each of the above scenarios.

DEPARTMENT'S RESPONSE:

A contract to incorporate tangible personal property into real property is considered a construction contract. The term construction contractor includes general contractors, subcontractors, and specialized contractors such as landscape contractors. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, these contractors incur Use Tax liability for such purchases based upon their cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. Therefore, any tangible personal property that a construction contractor purchases that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. As a general rule, except in cases of construction contractors who also act as retailers as discussed below, construction contractors should not provide resale certificates to their suppliers and should instead pay Use Tax and any reimbursement for locally-imposed occupation taxes at the time of purchase of tangible personal property to be incorporated into real estate. If such

contractors did not pay Illinois Use Tax liability to their suppliers, which may occur when purchasing from out-of-state suppliers, those contractors must self-assess their Illinois Use Tax liability and pay it directly to the Department. If the contractors have already paid a tax in another state regarding the purchase or use of such property, they will be entitled to a credit against their Illinois Use Tax liability to the extent that they have paid tax that was properly due to another state. See 86 Ill. Adm. Code 150.310. When the purchasing construction contractor (whether he or she is the prime contractor or the subcontractor) buys the item that he or she will convert into real estate in finished form, the tax base is what such construction contractor pays for the item.

When the construction contractor-installer (whether he or she is the prime contractor or a subcontractor) is also the manufacturer of the finished item that he or she will incorporate into real estate for his or her customer, the tax base is what such construction contractor pays for the materials that he or she incorporates into such finished item, plus whatever such construction contractor may pay for nails, screws or other items of tangible personal property that he or she buys and incorporates into real estate for his or her customer in the course of making the installation of the finished item. See 86 Ill. Adm. Code 130.2075(a)(2). The Illinois Use Tax rate incurred by a construction contractor on purchases of materials from an unregistered supplier located outside of this State is generally 6.25% as described in subsection (c) of Section 130.2075.

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to “reimburse” the construction contractor for his or her tax liability. Please note that construction contractors cannot bill this reimbursement to a customer as “sales tax,” but can include a reimbursement of tax on the bill. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor’s part.

If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

If, in addition to acting as a construction contractor, a person makes separate “over the counter” sales of his or her product, then a different set of rules would apply. If that is the case, please see 86 Ill. Adm. Code 130.2075(b). If the sales are made in

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Illinois, see 86 Ill. Adm. 270.115 regarding how to source local retailers' occupation taxes for sales made in Illinois.

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
Associate Counsel

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