

This letter discusses the component of interstate commerce involving shipment/delivery on sales by remote retailers to purchasers in Illinois. (86 Ill. Adm. Code 130.605; 86 Ill. Adm. Code 131) (This is a GIL)

May 30, 2023

NAME
COMPANY1
ADDRESS

Dear NAME:

This letter is in response to your letter dated April 24, 2023, 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:

We are writing to request a private letter ruling regarding the application of Illinois Sales Tax to sales to professional who prepares tax returns including those whose have designations of attorneys, Certified Public Accountants and Enrolled Agents as we are an Out of State Retailers who also sell inside of a Marketplace Facilitator.

We have a variety of products and services to our customers but would like some clarification.

We believe that our understanding of the applicable tax laws and regulations are accurate and with discussion from a department staff member (link follows) conflicts with other information we have received both online and from others with the Department.

The link provided by the

<https://www.law.cornell.edu/regulations/illinois/III-Admin-Code-tit-86-SS-130.2120>.

III. Admin. Code tit. 86, § 130.2120- Suppliers of Persons Engaged in Service Occupations and Professions

When Liable For Retailers' Occupation Tax

Suppliers of persons engaged in service occupations and professions incur Retailers' Occupation Tax liability when, apart from engaging in a service occupation or profession themselves, they sell tangible personal property, such as tools, office equipment, fixtures, supplies, soap and other tangible personal property to such persons, who retain and use or consume such tangible personal property, or who give such property away apart from their sale of other tangible personal property or service.

When Not Liable For Retailers' Occupation Tax

1) *Persons who sell tangible personal property to purchasers who resell the property to others, either as an incident to engaging in a service occupation or profession, or apart from engaging in any such activity, are selling tangible personal property to purchasers for purposes of resale and do not incur Retailers' Occupation Tax liability when making such sales.*

2) *However, suppliers are required to collect the Service Occupation Tax from servicemen when selling them tangible personal property which they will retransfer as an incident to rendering services for users (see Subpart A of the Service Occupation Tax Regulations).*

Notes

III. Admin. Code tit. 86, § 130.2120 Amended and effective April 19, 1968

However, we seek clarification and confirmation from the Department of Revenue to ensure that we are in compliance with all relevant tax laws and regulations.

The first is agreement on Economic Nexus enforcement. We believe the Leveling the Playing Field for Illinois Retail Act created an effective date for out of state retailers as 1/1/2021 as the Wayfair act compliance laws were changed and clarified with the aforementioned Act that passed in 2020.

Please inform us of the nature of compliance date as January 1, 2021 per the date on your website including the flowchart showing an effective date of January, 1, 2021.

The second is a request for determination of four core products.

In support of our request, we have provided the following information:

1. A detailed description of 4 core products
2. Relevant legal authorities, including statutes, regulations, and case law;
3. Any relevant facts or circumstances that may impact the application of sales tax; and
4. Any other information that may be relevant to the Department's analysis.

Based on the information provided, we respectfully request that the Department of Revenue issue a private letter ruling addressing the following issues:

1. Whether the transaction or activity described is subject to Illinois Sales Tax;
2. The applicable rate of tax if jurisdictional, if any;
3. Whether any exemptions, exclusions, or other special provisions apply; and
4. Any other issues that the Department deems relevant.

We understand that the information provided will be kept confidential and that the ruling will apply only to the specific transaction or activity described. We also understand that the ruling may be relied upon by us and by the Department of Revenue in the administration and enforcement of Illinois Sales Tax. Thank you for your attention to this matter. Please do not hesitate to contact us if you require any additional information or if you have any questions.

Example 1. Presentation Tax Folders

Based upon the Tax Preparer's Commercial Software we sell - Tax Return Folders and Tax Presentation Folders which provide an image of quality and distinction creating a memorable, tactile holder for the tax return. This reinforces the value of the service, and leaves them with sheer volume and impression of the work.

[IMAGE OMITTED]

This image represents a cut out folder where the Tax Preparers' Name and the Tax Clients name and address show through from the software page - we are using a COMPANY2 Software Folder as an example above.

COMPANY2 Software is a tax preparation software used by over 70,000 tax preparers and had custom cuts.

As the Nation has transitioned every year to digital filing, almost all preparers have a client print setting in their software. The best practice in the Tax industry is to hand a Complete Copy of a Tax return to the client as proof of filing completion. Although Digital is wonderful advancement in tax compliance, alas, most individual taxpayers do not have the knowledge to secure and protect this valuable data digitally, so we support the IRS recommendation and requirements to keep a secure copy of the return. This folder is an ancillary product for the professional service and costs are minimal per folder.

Also note, there is an option as you see from this above there is a CPA logo, so part of our services. Our clients can choose to customize this printed product with their name, address, and logo of any group they are affiliated with including Enrolled Agents and Certified Public Accountants.

This below is an example of a custom folder which we also believe is non-taxable for another reason custom printing and had seen other private letter rulings issued for client's customization which is standard operating practice for larger firms.

[IMAGE OMITTED]

We believe the above falls under II. Admin. Code tit. 86, § 130.2000 - Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers. We provide custom printing for tax preparers.

Persons Engaged in the Graphic Arts - When Not Liable For Tax

1) A photostater who is employed to reproduce material for his customer by the photostating process, or a printer who is employed to print material for his customer in accordance with copy supplied to the printer by the customer or otherwise in accordance with the customer's specifications and special order, or a person who otherwise engages primarily in the transaction in furnishing graphic arts' services is not engaged in such transaction in the business of selling tangible personal property within the meaning of the Act, if the item so produced does not serve substantially the same function as stock or standard items of tangible personal property that are sold at retail, but is engaged in such transaction primarily in a service occupation. For example, a printer that is hired by a customer to print personalized wedding invitations or greeting cards is engaged in the transaction as a serviceman.

In addition, we feel this rule also represents our products.

II. Admin. Code tit. 86, § 130.1995 - Personalizing Tangible Personal Property

b) When The Tax Does Not Apply

1) Sellers of personalized business calling cards, greeting cards, letterheads, envelopes, labels, name plates, badges, medallions and the like do not incur Retailers' Occupation Tax liability on their receipts from such sales because they are primarily engaged in a service occupation in producing or procuring such items, which have no commercial value for their customers.

2) Persons who personalize tangible personal property which already belongs to their customers also are engaged primarily in a service occupation and do not incur Retailers' Occupation Tax liability upon their receipts from engaging in such service occupation.

3) For information concerning the application of the Service Occupation Tax to the purchase and retransfer of tangible personal property by servicemen as an incident to sales of service, see the Service Occupation Tax Regulations.

This entire class is called Presentation Folders and we request a ruling if these are taxable or non-taxable based on the information presented under section Admin. Code tit. 86, § 130.2120 or further codes.

Example 2. Presentation Envelopes

As in example 1, envelope fall in the same category. Based upon the Tax Preparer's Commercial Software we sell - Tax Return Envelopes and Tax Presentation Envelopes which provide an image of quality and distinction as a tactile holder for the tax return to secure mailing and storing the return. This reinforces the value of the service and leaves them with sheer volume and impression of the work.

[IMAGE OMITTED]

This envelope is the COMPANY2 Tax Envelope that could be mailed to the client, the taxing authority including the Illinois Department of Revenue. The tax software selects the recipient and pre-prints a mailing sheet. As each software is different so there are many versions of this type of envelope

Other envelopes in this category include an E-file or Mail Completed Presentation Envelope where a customer can use no matter what software. This provides on the cover everything for the client and preparer

to track and complete the return along with instructions, amounts due and notes for next year. The Tax Return can be sealed inside for safe storage and everything a customer and tax preparer needs to know is put on the cover including an invoice for service performed.

[IMAGE OMITTED]

The last group of envelopes we provide are grouped in state specific or software specific.

State specific Individual and Estimate Envelopes like Illinois below where clients are given this to file their return to the State of Illinois.

[IMAGE OMITTED]

As for Software specific, COMPANY2 Software as mentioned above prints estimated 1040-es forms an state estimate payments forms. These envelopes match these payments forms with custom window envelopes which match federal printing requirements. This saves the practitioner time with making labels depending on their location or form. Although they look generic the COMPANY2 Software are custom made to, comply with all the Federal Mail Codes, Unique State Addresses and forgive alignment issues by thousands of preparers printer settings.

[IMAGE OMITTED]

We believe this is an ancillary service. It is best practice to give them a physical reminder with envelopes to make estimated payments each quarter to avoid penalties and interest.

We also personalize envelope just like folders with logos, names and addresses but feel your determination on personalized Folders would fall into personalized envelopes. So the rules that apply to Folders mentioned above also can apply to envelopes.

Example 3. Tax Forms

We sell several government tax reporting forms primarily 1099 and W-2 and those related forms. These forms are sold to Tax Preparers who use them in their service for clients. We believe these are also ancillary services for professionals. Here is one example of the many types of

products we sell and could fill many pages on the variations of 2 or 4 per page forms and all their variations.

[IMAGE OMITTED]

We will further add our research on of the largest sellers of ancillary products in this category has deemed tax products and their kits as non-taxable in Illinois under this rule.

As an example - we entered an order and theoretically shipped 100 of the above forms to the Department Illinois Revenue physical address under our and found this is not a Taxable Product.

Although COMPANY3 is an out of state corporation, they are an In State Retailer with a physical location in CITY

[IMAGE OMITTED]

COMPANY3 has an entire tax department with expert knowledge however, we could not get a resource to explain it to us other than it is non-taxable per their experts. They did refer me to their sales tax policy confirming they collect the right amount of sales tax.

ADDRESS2

Does COMPANY3 charge sales tax?

Yes, COMPANY3 collects sales tax based on the laws of the state in which the order recipient resides.

Example 4. Checks and Deposit Slips

We sell primarily to our tax preparers blank check stock used in their practices in addition we allow our customers to build custom printed checks based upon their bank accounts.

Are tax preparers purchases of blank check stock taxable and part of ancillary service of their profession?

If they customize their check putting a logo, address, and banking information the check would this make it non-taxable?

As further reference we used COMPANY3 as our example and with a checkout of a customized checks with an address located at the

Department of Revenue in Illinois. The COMPANY3 had calculated tax on this not know my use or profession.

[IMAGE OMITTED]

There answer was the same, we have experts who work with the Illinois Department of Revenue.

We utilize COMPANY3 products and feel it is very important to align our sales tax collection even though we do not have physical nexus in your state which is the purpose for the Level the Playing Field Illinois Retail Act.

DEPARTMENT'S RESPONSE:

Retailers' Occupation Tax Act

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. See 35 ILCS 120/2; 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

Nexus

Prior to October 1, 2018, out-of-State retailers had to have a physical presence in Illinois before they could be required to collect Use Tax. The types of activities constituting a physical presence are found in Section 2 of the Use Tax Act's definition of a "retailer maintaining a place of business in this State". 35 ILCS 105/2. Any out-of-State retailer that has a physical presence in Illinois will continue to be required to act as a Use Tax collector. Regulations describing these types of retailers are found at 86 Ill. Adm. Code 150.801 and 150.802.

In *South Dakota v. Wayfair, Inc.*, No. 17-494 (U.S. June 21, 2018), the U.S. Supreme Court upheld a South Dakota statute that imposed tax collection obligations on out-of-State retailers that met specific selling thresholds but had no physical presence in the state. This decision abrogated the longstanding physical presence

requirement. Illinois P.A. 100-0587 enacted nexus standards, effective October 1, 2018, that are virtually identical to those upheld in *Wayfair*. 35 ILCS 105/2. See 86 Ill. Adm. Code 150.803.

Beginning October 1, 2018, a retailer making sales of tangible personal property to purchasers in Illinois from outside of Illinois must register with the Department and collect and remit Use Tax if:

- A) The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
- B) The retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

Leveling the Playing Field

Public Acts 101-0031 and 101-0604 implemented a series of structural changes to the Illinois sales tax law that are intended to "level the playing field" between Illinois-based retailers and remote retailers by imposing State and local retailers' occupation taxes on Illinois retailers, remote retailers and marketplace facilitators alike. The regulations at 86 Ill. Adm. Code 131 implement the new requirements for remote retailers and marketplace facilitators.

On and after January 1, 2021, a remote retailer that meets either of the thresholds in 86 Ill. Adm. Code 131.115(a) is considered a retailer engaged in the occupation of selling at retail in Illinois for purposes of the Retailers' Occupation Tax Act and 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. Remote retailers 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. 86 Ill. Adm. Code 131.110.

Beginning January 1, 2021, marketplace facilitators are required to remit State and local retailers' occupation taxes on sales made over the marketplace on their own sales and sales made on behalf of marketplace sellers. The legislation provides that State and local retailers' occupation taxes on sales made by remote retailers and marketplace facilitators on behalf of marketplace sellers are incurred based on the rate in effect at the location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser ("destination sourcing"). State and local retailers' occupation taxes for a marketplace facilitator's own marketplace sales are incurred, depending on the nature of the transaction, either at the rate in effect at the location of Illinois inventory from which a sale is fulfilled or the Illinois location where selling activities otherwise occur ("origin sourcing"), or by using destination sourcing.

Section 131.107 describes the different types of retailers after January 1,2021. Section 131.155 explains the sourcing rules for different types of retailers.

Graphic Arts

Persons engaged in the graphic arts or related occupations may, under certain circumstances, be considered to be engaged in the business of selling tangible personal property to purchasers for use or consumption, in which event they incur Retailers' Occupation Tax liability. This is the case, for example, when they sell to purchasers for use or consumption tangible personal property which is standard enough to be stocked for sale or offered for sale from catalogues or other sales literature, or which otherwise is sold at retail apart from the seller's engaging in a service occupation. Illustrations would include legal forms, stock or standard greeting cards, pictures or other items which are stocked for sale or offered for sale to the public generally, or products of photoprocessing. 86 Ill. Adm Code 130.2000.

A printer who is employed to print material for his customer in accordance with copy supplied to the printer by the customer or otherwise in accordance with the customer's specifications and special order, or a person who otherwise engages primarily in the transaction in furnishing graphic arts' services is not engaged in such transaction in the business of selling tangible personal property within the meaning of the Act, if the item so produced does not serve substantially the same function as stock or standard items of tangible personal property that are sold at retail, but is engaged in such transaction primarily in a service occupation. For example, a printer that is hired by a customer to print personalized wedding invitations or greeting cards is engaged in the transaction as a serviceman. To the extent to which any such person engages in a service occupation, he is not liable for Retailers' Occupation Tax on his receipts therefrom, including receipts from both labor and tangible personal property.

The Department has recognized situations where printed materials are "used" outside Illinois and then placed for mailing by mail or common carrier outside Illinois for delivery into Illinois, and during which, the serviceman loses the ability to exercise control over the printed materials (e.g., to recall the materials). Generally, in those situations, a serviceman would not incur a Use Tax liability nor a Service Use Tax collection obligation if the serviceman does not retain the ability to exercise control over the shipment of the printed materials after entry into Illinois. The general information letters referenced above also describe the general tax liabilities of printers in special order printing situations. Such liabilities may accrue, if the serviceman were to have any control over the printed materials in this State.

Service Occupation Tax

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 are required to 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.

Jurisdictional Issues – Service Occupation Taxes

If the Illinois Service Occupation Tax on a transaction is being remitted to the Department by the serviceman, the serviceman shall also pay any local service occupation tax to the Department on the same transaction if such serviceman engages in the business of making sales of service within a jurisdiction that has adopted a local service occupation tax. If a purchase order is accepted outside this State but the tangible personal property which is sold incident to the sale of service is in the inventory of a serviceman located within a home rule municipality at the time of its sale (or is subsequently produced in the home rule municipality) then delivered in Illinois to the service customer, the place where the property is located at the time of the sale (or subsequent production in the municipality) will determine where the seller is engaged in business for local service occupation tax purposes with respect to such sale. See, for example, 86 Ill. Adm. Code 280.115.

Service Use Tax

The Service Use Tax is a privilege tax imposed on the privilege of using, in this State, tangible personal property that is received anywhere as an incident to a purchase of service from a serviceman. However, if the serviceman would not be taxable under the Service Occupation Tax Act despite all elements of the sale of service occurring in Illinois, then the tax imposed by the Service Use Tax Act does not apply to the use of such property in this State. Any evidence that property was sold by any person for delivery to a person residing in or engaged in business in this State shall be prima facie evidence that such property was sold for use in this State. The rate of the Service Use Tax is 6.25% of the serviceman's selling price of the tangible personal property transferred by the serviceman as an incident to a sale of service. 86 Ill. Adm. Code 160.101. The Service Use Tax shall be based on the selling price of the tangible personal property transferred incident to the sale of service if stated separately on the invoice from the serviceman. If not stated separately, then the tax will be imposed on 50% of the entire billing from the serviceman. However, the Service Use Tax which is collected by a de minimis serviceman who incurs Service Occupation Tax on his cost price of tangible personal property transferred incident to service, as provided at 86 Ill. Adm. Code 140.109, shall be based upon his cost price of tangible personal property transferred incident to his or her sales of service. 86 Ill. Adm. Code 160.115.

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.

COMPANY1/NAME

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Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:db