

This letter discusses the tax liabilities for a construction contractor that is a combination contractor and retailer. 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. However, if the construction contractor provided its supplier with a certificate of resale and then sells at retail tangible personal property over-the counter, the contractor must pay Retailers' Occupation Tax and collect Use Tax from its customer. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075. (This is a GIL.)

July 05, 2023

COMPANY
ADDRESS

Dear NAME:

This letter is in response to your letter dated May 10, 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:

I have just gone through an audit with the Illinois Department of Revenue for Sales Tax. In order to correctly fill out my ST-1, I was told by the auditor, NAME, that I need a Private Letter of Ruling for a Dual Purpose Contractor from you. He told me that he was unable to direct me in the preparation of our monthly tax return. I would like to prepare the returns in a correct way from here on out to avoid any issues in the future if we are audited again. I am hoping that the Private Letter of Ruling for Dual Purpose Contractors will guide me in the right direction.

If you have any questions, I can be reached Monday-Thursday from 7-3 at ###-###-#### or email E-MAIL.

DEPARTMENT'S RESPONSE:

The Department is without sufficient information to provide you with a Private Letter Ruling. Therefore, we hope the following general information will assist you.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. 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. These taxes comprise what is commonly known as "sales tax" in Illinois.

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.

The relevant authority regarding the tax liabilities due on purchases of materials by contractors acting as combination retailers/construction contractor may be found in the Department's regulations located at 86 Ill. Adm. Code 130.2075(b)(2). This regulation requires the retailer/contractor to self-assess the tax liability directly to the Department in the same form as the supplier would have assessed (Retailers' Occupation Tax including local occupation tax, if applicable), if the retailer/contractor provided the supplier with a certificate of resale at the time of purchase. The Department's regulation 86 Ill. Adm. Code 130.2075(b)(3) read in conjunction with Section (b)(2) discusses the situs of the local occupation taxes to be applied.

If a customer purchases tangible personal property over the counter without installation, for example an appliance or counter tops, then the retailer/contractor owes Retailers' Occupation Tax and must collect the corresponding Use Tax from the customer. If a customer purchases appliances or counter tops over the counter and separately contracts for installation of the appliances or counter tops, then the retailer/contractor owes Retailers' Occupation Tax and must collect the corresponding Use Tax from the customer on the sale of the appliances or counter tops. The separately contracted for installation of the appliances or counter tops is a separate service and no Retailers' Occupation Tax is incurred by the customer on the installation charges. See 86 Ill. Adm. Code 130.450.

A contract that provides for both the sale and installation of tangible personal property that is permanently affixed or incorporated into a structure is considered a construction contract (whether or not the cost of installation is separately stated in the contract). Obvious examples of the type of tangible personal property that is permanently affixed or incorporated into a structure are bathtubs, sinks, lavatories, cabinets built into the structure, water heaters, and water softeners. Stoves and refrigerators that are not free standing and are built into the structure are some additional examples.

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. If such contractors did not pay the Use Tax liability to their out-of-State suppliers, those contractors must self-assess their Use Tax liability and pay it directly to the Department at the rate of 6.25%. 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.

As a general rule, construction contractors should not be providing resale certificates to their suppliers in Illinois or to out-of-State suppliers registered to collect Illinois Use Tax and should be paying use tax and any locally-imposed retailers' occupation taxes at the time of purchasing the tangible personal property to be incorporated into real estate. However, when the purchaser (the purchaser here is the retailer/contractor) of tangible personal property may use such property by converting it into real estate, but may also resell such property "over-the-counter" apart from acting as a construction contractor, and where it is impracticable, at the time of purchasing such tangible personal property, for such purchaser to determine in which way the purchaser will dispose of the property, such purchaser may certify to the supplier that the purchaser is buying all of such tangible personal property for resale and thereafter account to the Department for the tax on disposing of such property. 86 Ill. Adm. Code 130.2075(b). If the purchaser subsequently uses the tangible personal property by converting it into real estate in this State in any manner, the purchaser must include the cost price of such tangible personal property in their reported taxable receipts in their return to the Department and must pay the State Retailers' Occupation Tax (not the Use Tax, but the Retailers' Occupation Tax) thereon to the Department, and must also pay locally-imposed retailers' occupation taxes thereon, if any. 86 Ill. Adm. Code 130.2075(b)(2). The cost price of such tangible personal property should be reported as receipts on Lines 1 and 4a of the ST-1 Sales and Use Tax Return.

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

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contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as "sales tax," but can be listed on a bill as a reimbursement of tax. 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.

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,

Kimberly A. Rossini
Associate Counsel

KAR:dlb