

When signs are permanently affixed to real estate, the tax consequences attributable to construction contractors apply. (86 Ill. Adm. Code 130.2155; 86 Ill. Adm. Code 130.1940) (This is a GIL.)

July 27, 2023

NAME
COMPANY
ADDRESS
COUNTRY

Dear NAME:

This letter is in response to your letter dated May 22, 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:

Could you please forward me a private letter ruling on whether ‘1. PRODUCT would be considered real property or personal tangible property and 2. Clarification of how taxes are to be applied.

The structure is free standing and stands proud of the main building. It is installed to a concrete foundation on a series of anchor bolts.

I have attached artwork and technical drawings demonstrating how this PRODUCT are manufactured and installed, that may help with the understanding of what the PRODUCT are and whether they should be considered real property or personal tangible property.

COMPANY is manufacturing this PRODUCT and hiring 3rd party to install them for us. We are then invoicing the dealers directly for the supply, freight and install.

Issues:

1. Whether PRODUCT bolted to a foundation retain its character as “tangible personal property” embedded in the ground should be constitute “real property for Sales & Use Tax purposes?
2. What are the State and local sales & use tax consequences of the sale, installation, and repair of the “PRODUCT” that qualifies as **tangible personal property** to COMPANY and its customers?
3. What are the State and local sales & use tax consequences of the sale, installation, and repair of “PRODUCT” that qualifies as **real estate** to COMPANY and its customer?

Should you require further clarification do not hesitate to contact me.

DEPARTMENT’S RESPONSE:

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 86 Ill. Adm. Code 130.101. In addition to the State occupation tax, some jurisdictions are allowed to impose local occupation taxes which the Department collects in conjunction with the State occupation tax. Generally, the local occupation tax rate is determined based on the location at which a retailer's selling activities take place. See 86 Ill. Adm. Code 270.115. In addition to the State and local occupation taxes, there is also a Use Tax which is imposed on the privilege of using in Illinois, 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 the “sales tax” in Illinois. Although retailers owe the State and local occupation taxes, they are authorized to reimburse themselves for this liability by collecting the entire tax amount from their customers which includes the 6.25% Use Tax.

A person who sells signs that have commercial value (i.e., value to persons other than the purchasers) incurs Retailers' Occupation Tax (sales tax) liability when making such sales, even if such signs are produced on special order for the purchaser. Examples of signs having such commercial value would be ones that spell out “real estate”, “insurance,” or “hamburgers,” and which do not spell out the name of the purchaser nor the brand name of the purchaser's product and which are not otherwise similarly individualized. See 86 Ill. Adm. Code 130.2155 regarding vendors of signs. When a sign that has commercial value is sold and installed, the installation charge is also subject to Retailers' Occupation Tax unless there is a separate agreement for the installation charge. See 86 Ill. Adm. Code 130.450.

If the sign vendor produces a sign on special order of the customer and the sign is so specialized that it would have no commercial value to anyone other than that particular customer who placed the order, the sign vendor would not incur Retailers' Occupation Tax liability. These transactions would be subject to liability under the Service Occupation Tax Act, and the sign vendor would be considered a serviceman. See generally, 86 Ill. Adm. Code 140.101.

Persons who sell signs may incur a Retailers' Occupation Tax, Service Occupation Tax or Use Tax liability, depending upon the circumstances of each sale. See 86 Ill. Adm. Code 130.2155.

For signs that are permanently affixed to real estate, the tax consequences attributable to construction contractors will apply. Under Illinois law, a person who takes tangible personal property off the market and converts it into real estate is deemed a construction contractor and is the legal end-user of the tangible personal property. The construction contractor, as the user, incurs Illinois Use Tax and local Retailers' Occupation Tax reimbursement liabilities when the tangible personal property that will be converted into real estate is purchased from registered Illinois suppliers. If such items were purchased from suppliers that did not collect the tax, the person who converts the tangible personal property into real estate is required to self-assess and remit the Use Tax to the Department based upon the cost price of the property. For information on construction contractors, see 86 Ill. Adm. Code 130.1940 and 130.2075.

Examples of when a sign is considered permanently affixed are found at 86 Ill. Adm. Code 130.2155(d)(2) and include:

- A sign is permanently affixed to real estate when it is bolted or otherwise permanently affixed to the building or is hardwired into the building's general wiring system.
- A sign is permanently affixed to real estate when a permanent concrete foundation is made for the sign and the sign is affixed to its foundation or hardwired into an electrical system.
- A sign is permanently affixed to real estate when it is affixed to a pole that is placed in the ground.

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,

Tom Grudichak

COMPANY/ NAME

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Associate Counsel

TG:dlb