

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

August 16, 2023

Dear
NAME1
NAME2
ADDRESS

This letter is in response to your email dated June 15, 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:

Each year, the COMPANY1, in conjunction with COMPANY2, collects and disseminates information regarding the tax laws of each state. The results of the annual survey are published in the PRODUCT, which has been one of the premier state tax reference books for 40 years. Your assistance in the preparation of the 2024 edition is essential.

Please complete the attached corporate income tax and sales tax questionnaires and email the completed questionnaires to [ADDRESS](#) by **August 18, 2023**. All new questions are highlighted in red font. To save time, 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. If your responses to last year’s questionnaire would be helpful, let us know and we will send you a copy.

Please acknowledge the receipt of this email and 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 PRODUCT 2024, or should we send you an access code for an eBook?

Please contact us at [ADDRESS](#) if you have any questions and thank you for your continued support of this important tax reference book.

DEPARTMENT'S RESPONSE:

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

A. SALES AND USE TAX: COMPLIANCE AND ADMINISTRATION

[11] Does your state issue private rulings? Yes No ▪ If YES, answer the following questions:

Taxpayers can obtain sales tax rulings on nexus

DEPARTMENT'S RESPONSE

Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. Generally, a determination regarding physical nexus is very fact specific and cannot be addressed in the context of a GIL or PLR. The Department has found that the best manner to determine nexus is for a Department auditor to examine all relevant facts and information.

B. SALES AND USE TAX BASE

[1] Taxable Items

Which items are subject to sales/use tax in your state (check all that apply)?

Repair labor on tangible personal property Repair labor on real property

DEPARTMENT'S RESPONSE

Transfers of repair parts, repair materials and other tangible personal property by persons who repair tangible personal property belonging to others as an incident of furnishing repair services are generally subject to tax under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.101. Persons who repair real property are considered

construction contractors. Construction contractors are considered the end users of tangible personal property they permanently affix to realty, and as the end user of such property, the construction contractor incurs Illinois use tax liability. See 86 Ill. Adm. Code 130.1940(c). The taxability of maintenance agreements depends upon whether charges for the agreements are included in the selling price of the tangible personal property. If the charges for the agreements are included in the selling price of the tangible personal property, those charges are part of the gross receipts of the retail transaction and are subject to tax. In those instances, no tax is incurred on the maintenance services or parts when the repair or servicing is performed. A manufacturer's warranty that is provided without additional cost to a purchaser of a new item is an example of an agreement that is included in the selling price of the tangible personal property. See 86 Ill. Adm. Code 140.141 and 140.301(b)(3).

[4] TAX BASE

Which items are included in the price that is subject to sales/use tax (check all that apply)?

Federal excise tax on tires Federal excise tax on sporting equipment

DEPARTMENT'S RESPONSE

Federal taxes which are imposed upon consumers, and federal excise taxes imposed upon tangible personal property sold at retail (as opposed to tangible personal property sold by a wholesaler, importer, manufacturer or other producer) are not includable in the gross receipts subject to tax. However, when federal taxes are imposed upon importers, wholesalers, manufacturers or other producers, the tax is includable in the gross receipts subject to tax. In the latter instance, these taxes are considered to be part of the cost of doing business, and thus are part of the selling price of the tangible personal property being sold. See 86 Ill. Adm. Code 130.445.

[7] CORPORATE TRANSACTIONS

Does your state impose sales/use tax on the following (check all that apply)?

Liquidation under IRC § 336

DEPARTMENT'S RESPONSE

Such sales are subject to the retailers' occupation tax and use tax provided that the liquidation takes place by means of sales, and provided that the sales are made for use or consumption and consist of tangible personal property customarily sold by such business. See 86 Ill. Adm. Code 130.105.

[47] DIGITAL PRODUCTS

Does your state impose sales/use tax on these items when sold in digital form (check all that apply)?

Nonfungible tokens (NFTs)

DEPARTMENT’S RESPONSE

Nonfungible tokens are considered digital assets and are currently not subject to the retailers’ occupation and use tax. See 86 Ill. Adm. Code 130.2105(a)(3).

[74] Simplified Sellers Use Tax Program

<p>Does your state offer a simplified sellers use tax program that allows remote sellers to collect a single simplified rate for all sales into the state? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, does the state require prior application to the program? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, what is the tax rate?</p> <p>If YES, what form is used?</p>

DEPARTMENT’S RESPONSE

Illinois law does not allow for remote retailers to collect a simplified rate for all sales into the State. 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 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. See 86 Ill. Adm. Code 131.110(a). 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, and the State and local retailers' occupation taxes are incurred at the rate in effect at this location. See 86 Ill. Adm. Code 131.110(b).

[75] Retail Delivery Fee

YES

NO

<p>Does your state impose a retail delivery fee? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>If YES:</p> <p>What is the effective date? _____</p> <p>What is the fee amount or rate? _____</p> <p>If YES:</p> <p>Is delivery by motor vehicle necessary? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>Is the delivery fee applicable to all retailers, including marketplace facilitators, making taxable retail sales? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>Is the delivery fee applicable to wholesale sales? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>Is the delivery fee applicable to retail sales exempt from sales tax? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>Is there a small seller exemption? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>Must the retail delivery fee be separately stated? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>Is the retail delivery fee part of the tax base subject to sales and use tax? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>What are the time periods for which the retail delivery fee returns must be</p>

COMPANY/ NAME

Page 5

August 16, 2023

filed?

Monthly Quarterly Semi-annual Annually

COMPANY/ NAME

Page 6

August 16, 2023

DEPARTMENT'S RESPONSE

Illinois does not impose a retail delivery fee. Outgoing transportation and delivery charges are part of the gross receipts subject to the retailers' occupation tax when there is an inseparable link between the sale of tangible personal property and the outgoing transportation and delivery of the property. (See *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351(2009). An inseparable link exists when the transportation and delivery charges are not separately identified to the purchaser on the contract or invoice or when the transportation and delivery charges are separately identified to the purchaser on the contract or invoice, but the seller does not offer the purchaser the option to receive the tangible personal property in any manner except by the payment of transportation and delivery charges added to the selling price of the item. For example, the seller does not offer the purchaser the option to pick up the tangible personal property. See 86 Ill. Adm. Code 130.415(b)(1)(B).

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

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