

To prevent actual or likely multistate taxation, to the extent an Illinois purchaser has properly paid tax at a rate of 6.25% or greater in another state with respect to the sale, purchase, or use of that property, no additional Use Tax is owed to Illinois on such purchase. See 86 Ill. Adm. Code 150.310(a)(3). (This is a GIL.)

September 4, 2024

COMPANY
Attn: NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated June 24, 2024, 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 working on a use tax review and are wondering what the applicability of 35 ILCS 105-3-55(d), attached, is to our situation.

Our situation is that we have an office in CITY, IL and we order tangible personal property (equipment) online to be delivered to that office. In reviewing our invoices for use tax purposes, we have noticed that sometimes vendors will charge sales tax that does not match the CITY, IL sales tax rate or even the IL state sales tax rate of 10.25% or 6.25%. Please see below for the two situations. After reading 35 ILCS 105-3-55(d) it is our understanding that we would owe use tax of 3.00%, the difference (7.25%-4.25%), is situation one. The 3.00% would be 2.00% for state and 1.00% for local. In situation two, we would owe no use tax as more than the 7.25% has been charged and collected. Can you please confirm if our understanding of the two situations is correct?

1. Situation one - an out of state vender who we get equipment from charges us 4.25% of sales tax. The Vender is not from IL and we are not aware of what state tax is being charged.
2. Situation two - an out of state vender who we get equipment from charges us 8.25% of sales tax. The Vender is not from IL and we are not aware of what state tax is being charged.

DEPARTMENT'S RESPONSE:

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. The Use Tax Act, which complements the Retailers' Occupation Tax Act, imposes a tax 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. 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 retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

Your question concerns the liability of a purchaser for Use Tax under 35 ILCS 105-3-55(d). However, your letter doesn't contain sufficient detail of the transactions involved for the Department to provide a specific answer. We hope the information provided herein, will give you the guidance you seek regarding Use Tax liability.

Generally, an out-of-State retailer with an ongoing physical presence in Illinois falls within the definition of "retailer maintaining a place of business in this State" under Section 2 of the Use Tax Act, 35 ILCS 105/2. As a result, such retailers incur only a Use Tax collection obligation (6.25%), on retail sales made to Illinois purchasers from locations outside Illinois. However, if retail sales are made to Illinois purchasers from locations in Illinois, the retailer incurs State and local retailers' occupation tax at the rate in effect where the selling activities occur. See 86 Ill. Adm. Code 270.115 for a discussion of sales activities which are used to determine the tax jurisdiction for a retail sale. This selling activity frequently occurs when sales made to Illinois purchasers are filled from inventory located in Illinois.

Beginning January 1, 2021, an out-of-State retailer without sufficient physical presence in this State meeting either tax remittance threshold as set out in 86 Ill. Adm. Code 131.115(a) is liable for all applicable State and locally imposed retailers' occupation taxes administered by the Department of Revenue on all sales made to Illinois purchasers. In such case, the "remote retailer" is engaged in the business of selling at

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the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. See 86 Ill. Adm. Code 270.115(e).

To prevent actual or likely multistate taxation, the Use Tax does not apply to the use in Illinois of tangible personal property that is acquired in another state and brought into Illinois by a person who has already paid a tax in such other state with respect to the sale, purchase, or use of that property, to the extent of the amount of tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310(a)(3). Thus, if tax was properly due and paid in another state on the tangible personal property shipped into Illinois, then a taxpayer may credit the amount of that tax paid on its return in determining its Illinois Use Tax liability. See 86 Ill. Adm. Code 150.310(a)(3). We recommend you contact your vendor to obtain clarification on the sales taxes being charged. For information regarding documentation to show the purchaser has paid tax to another state see 86 Ill. Adm. Code 150.1301.

Please note that beginning January 1, 2025, a retailer with an ongoing physical presence in Illinois that falls within the definition of “retailer maintaining a place of business in this State” under Section 2 of the Use Tax Act, 35 ILCS 105/2, is liable for all applicable State and locally imposed retailers’ occupation taxes administered by the Department on all retail sales made to Illinois purchasers from the retailer’s out-of-State locations. Such retailer is 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. (Public Act 103-0983, effective August 9, 2024).

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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