

Under the Service Occupation Tax, servicemen are taxed on tangible personal property transferred incident to a sale of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

May 15, 2009

Dear Xxxxx:

This letter is in response to your undated letter which was received by this office on March 27, 2009, in which you request 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 am writing you in response to the letter our office received from the Department of Revenue concerning Illinois Sales Tax. We have done a search of our accounting records and have identified a supplier that does not charge us sales tax. We contacted that supplier to discuss this issue and they have assured us that they do not charge us tax because we are not subject to this tax. In fact they provided us with the attached documentation referencing regulations that they have used to interpret this particular tax law.

Specifically, the above mentioned supplier provides us with a nuclear-pharmaceutical substance that allows us to provide certain images of the heart. This substance is injected in to [sic] the patient prior to conducting a Nuclear Stress Test. The images from the test are then used as a diagnostic tool for the doctors. The Nuclear Regulatory Board has strict guidelines concerning the use of this substance due to its' [sic] radioactive nature and it is therefore only used for purposes of conducting a Nuclear Stress Tests [sic]. We do not sell this substance to another party or the patients. We are a cardiology office and therefore provide medical services to the general public.

A phone call was placed to the Department of Revenue and the gentleman that spoke with me has made notes in our record indicating that we are attempting to resolve this and even though he believed that we were not liable for this tax, he felt it was in our best interest to get a legal opinion.

We would therefore like to request that you give us further legal direction on this issue so that we ensure compliance.

Please feel free to contact our office by telephone if you have questions.

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 at retail to purchasers for use or consumption. See 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 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service. If tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Service Use Tax liability for the servicemen depending upon his activities. However, if no tangible personal property is transferred incident to the sales of service, the Service Occupation Tax and Service Use Tax do not apply. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service. The registration requirements for servicemen may be found at 86 Ill. Adm. Code 140.601.

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. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The serviceman's liability may be calculated in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's 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 the sale of service. The tax is then calculated on the separately-stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

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. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such

servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

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. 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.

Accordingly, if you merely provide a service and the annual aggregate cost price of the tangible personal property you transfer incident to the sale of service is less than 35% of your total annual gross receipts from your service transactions, and you do not sell any tangible personal property, then you would not be required to register to collect Retailers' Occupation Tax and would be considered an unregistered de minimis serviceman. If that is the situation, then you would pay Use Tax to your supplier. If your supplier is not registered to collect and remit tax, then you must register, self-assess and remit Use Tax to the Department. In addition, you would be considered the end-user of the tangible personal property (the nuclear-pharmaceutical substance) and would not be authorized to collect a "tax" from your service customer (the patient).

You may wish to review the Department's regulation on the State tax rates involving the transfer of food, drugs, medicines, and medical appliances. See 86 Ill. Adm. Code 130.310.

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,

Debra M. Boggess
Associate Counsel

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