

If tangible personal property is transferred incident to sales of service, this will result in either Service Occupation tax liability or Use Tax liability for the serviceman depending upon his or her activities. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

August 31, 2009

Dear Xxxxx:

This letter is in response to your letter dated June 1, 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:

As requested by a judge, please assist me with an answer to the following question:

I am the owner of a photography studio and I am in a dispute with a client that is suing me for wanting to charge him tax on a job I did for him. The job entailed was that the client brought me a large quantity of their family's old photos which they asked me to scan and put on a CD. The job was completed and I said they owed tax on the entire job. They are disputing that they owe tax. I called my accountant and he said they owed the tax. I did a test to see if other companies doing the same exact service were charging tax. So I took some photos to Walgreen's and Jewel stores and had them scan the photos for me, which was exactly the service I provided my client and what I had charged the tax for to my client. Both Walgreen's and Jewel stores charged tax on the entire amount and at the same tax rate I want to charge my client. So both Walgreen's and Jewel stores taxed the job in the exact same way [sic] I did. I chose stores within only a block from my office so the comparisons would be exact. I then called the Illinois Dept of Revenue at 217-524-4772 and spoke to INDIVIDUAL who also said the CD represented tangible property and therefore tax on the entire amount was due.

I have included a copy of the two receipts from Walgreen's and Jewel for your review. As I previously stated, I took my personal photos to Walgreen's and Jewel, handed them to the counter person and asked them to scan them and put the images on a CD.

I came back a few days later and picked up my CD and paid the bill. They both charged me tax on the entire job. Other than [sic] the quantity of photos I took to Walgreen's and Jewel and the quantity of photos my client gave me, the services performed by Walgreen's and Jewel were identical to the services I performed for my client.

None of this mattered to my client and he took me to small claims court and the Judge would not rule because he did not know the answer. Therefore, the judge said I had to cooperate with my client to get the answer from the Illinois Dept of Revenue.

Please send me a letter that gives an answer to if tax is due on this job.

I appreciate your assistance in expediting a response and thank you in advance for your immediate attention. I will await your written response.

DEPARTMENT'S RESPONSE:

I am unable to give you a specific answer to your question because I do not have sufficient information about your business or how you calculate your tax base. However, I hope that you find the following helpful.

Under the Service Occupation Tax, servicemen are taxed on tangible personal property transferred as an incident of sales of service. See 86 Ill. Adm. Code 140.101, which sets forth the basis and rate of the Service Occupation Tax. Under the Service Use Tax Act, a tax is imposed on the privilege of using, in Illinois, tangible personal property that is received anywhere as an incident to a purchase of service from servicemen. See 86 Ill. Adm. Code 160.101, which describes the nature of the tax.

Generally, under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. The liability of servicemen in these transactions may result in either Service Occupation Tax liability or Use Tax liability for servicemen depending upon which tax base the servicemen choose to calculate their tax liability. Servicemen may calculate their tax base 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 the Retailers' Occupation Tax Act. Normally, most printers handle their liabilities under one of the de minimis methods.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. Under a second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, the servicemen must use 50% of the entire bill to service customers as the tax base. Both of the above stated methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for 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. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the servicemen's annual gross

receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

De minimis servicemen that are not otherwise required to be registered under the Retailers Occupation Tax Act may use the final method of determining tax liability. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. The servicemen are not authorized to collect "tax" from their service customers nor are the servicemen liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction-by-transaction basis.

Section 2-15 of the Retailers' Occupation Tax Act, however, contains specific rules for photoprocessing and photographers. Generally, photographers are subject to Retailers' Occupation Tax on the photoprocessing component of their total service charge when they sell products of photoprocessing. See 86 Ill. Adm. Code 130.2000. In transactions in which products of photoprocessing are sold in conjunction with other services, if a charge for the photoprocessing component is not separately stated, tax is imposed on 50% of the entire selling price, unless the sale is made by a professional photographer, in which case tax is imposed on 10% of the entire selling price. For purposes of the tax, "photoprocessing" includes, but is not limited to, developing films, positives and negatives, transparencies, tinting, coloring, and making and enlarging prints. See Section 130.2000(b)(3). Please note that the sale of photo scanning or digital imaging services is not a sale of products of photoprocessing. Please refer, rather, to the discussion of Service Occupation Tax for the tax treatment of this type of service.

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
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