

ST-13-0060 – GIL 10/22/13 CERTIFICATES OF RESALE

This letter discusses requirements for certificates of resale. See 86 Ill. Adm. Code 130.1405.
(This is a GIL.)

October 22, 2013

Dear Xxxxx:

This letter is in response to your letter that we received on February 21, 2013, 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:

My name is TAXPAYER and I work for COMPANY3, a logistics company based in CITY, STATE.

We have a potential business opportunity to export automobiles to COUNTRY; for which we require guidance to ensure we comply with the applicable regulations, please see the following conditions and scenario below:

CONDITIONS

- Commodity: New and Used Automobiles
- Quantity: 1 to 3 automobiles per Week
- Supplier: Various Automobile Dealers in Illinois
- Export Port: CITY
- Destination: COUNTRY
- Actual Buyer: COMPANY1
- Ordering Party: COMPANY2
- US Buying Party: COMPANY3

SCENARIO

1. COMPANY1 requests COMPANY2 to locate and purchase automobiles with specific criteria in the US.

2. COMPANY2 requests COMPANY3 to locate and purchase automobile.
3. COMPANY3 locates and purchases the automobile and informs the dealer that the automobile will be exported to COUNTRY and requests a sales tax exemption.
4. COMPANY3 exports the automobile to COUNTRY and provides exporting documents to the dealer as sales tax exemption for auditing purposes.
5. COMPANY3 sells the automobile to COMPANY2 at cost and charges an additional 3% finder's fee.
6. COMPANY2 sells the automobile to COMPANY1 at cost and charges an additional 6% finder's fee (COMPANY3 3% + COMPANY2 3%).
 - Price of automobile is not 'marked up the 6% finder's fee is on separate charge line.
7. Upon arrival to COUNTRY port, COMPANY2 arranges delivery to COMPANY1.

With consideration of the above scenario, please kindly advise:

- A. Is our understanding correct that Sales Tax is exempt if automobiles are exported?
- B. Is a Reseller's License, Seller's Permit or other authority required for COMPANY3 to engage in this Business?
- C. Are there any other issues or requirements that we should be concerned?

If you require more detail, please let us know.

Thank you in advance for your assistance.

DEPARTMENT'S RESPONSE:

In your letter, you raise several potential issues. We do not have enough information about the transactions involved in the automobile purchases your corporation makes to determine your tax consequences. Without more information, we cannot provide guidance to you regarding the taxability of each of these transactions. However, from the information that you have supplied, it appears that COMPANY3 may be purchasing for resale when the corporation purchases automobiles from automobile dealers located in Illinois. We urge you to obtain a reseller's number to use in such transactions. See 86 Ill. Adm. Code 130.1405. When sales for resale are made, sellers should, for their protection, take a Certificate of Resale from the purchaser. Mere statements by sellers that property was sold for resale will not be accepted by the Department without corroborative evidence. Certificates of Resale may be made a part of purchase orders signed by the purchaser.

A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale (Section 2c of the Act). In addition to the statement, a Certificate of Resale must contain:

- 1) the seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certificate of Resale to Out-of-State purchaser:
 - a) purchaser's registration number with the Illinois Department of Revenue; or
 - b) purchaser's resale number issued by the Department of Revenue; or
 - c) a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

Your letter describes two other potential transactions. If the sales from COMPANY to COMPANY and from COMPANY to COMPANY occur in STATE, these transactions could trigger Illinois tax liability. They may also be sales for resale. However, we cannot say whether you have tax liability based on the limited information provided.

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,

Cara Bishop
Associate Counsel

CB:msk