

ST-15-0032 GIL 06/18/2015 CONSTRUCTION CONTRACTORS

This letter discusses the tax liability of construction contractors. See 86 Ill. Adm. Code 130.1940.

June 18, 2015

Dear Mr. XXXX:

This letter is in response to your letter dated February 17, 2015, 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 business name is COMPANY 1, my account ID XXXX-XXXX. I own COMPANY 2 and COMPANY 3. I am the owner and have no employees, I subcontract any help I need. I buy my material for my jobs wholesale, sometimes in IL other times out of state. I pay my own sales tax. All material, labor, and tax are billed as one total cost for each job. I have included an ST-1 form that I fill out to pay my sales tax. I have been given conflicting information on the correct way to pay my sales tax. An auditor from the local Rockford branch of the IL Dept. of Revenue said I should be paying 8.25% sales tax when buying my materials in IL wholesale and I should be paying sales tax to the IL wholesaler. Shes also said when I buy out of state I send 8.25% to the state as the end user because that is my rate in CITY.

When I have spoken to IL Dept. of Revenue down state they told me as an end user and contractor I need to pay 6.25% on my material in state or out of state. They also gave me your address and told me to write to you to get the correct way to pay my sales tax.

I would appreciate a letter back with correct information. You may call me with any questions at XXX-XXX-XXXX.

DEPARTMENT'S RESPONSE:

If a person or business is contractually required to purchase tangible personal property for incorporation into real estate, then it would be acting as a construction contractor. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property and generally pay tax to their suppliers. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075.

You mention that you purchase items out-of-state. Please be advised that the Illinois Use Tax Act provides, that in order to prevent multi-state taxation, the Use Tax does not apply to the use, in Illinois, of tangible personal property acquired outside of this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of such property, to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property. Please note that any tangible personal property provided by the customer would not subject the construction contractor to use tax liability (the customer itself will incur the use tax liability on the purchase of that property).

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as "sales tax," but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor's part.

Construction contractors may not provide resale certificates to their suppliers for tangible personal property purchased and permanently affixed to real estate. As noted above, they should pay Use Tax to their suppliers.

The Home Rule Municipal Retailers' Occupation Tax (HRMROT) authorizes retailers subject to these taxes to reimburse themselves for their liability by separately stating these taxes to their customers. 86 Ill. Adm. Code 270.101. The statutory language authorizing the HRMROT states, in part, the following:

'Persons subject to any tax imposed under the authority granted in this Section may reimburse themselves for their seller's tax liability hereunder by separately stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with State tax which sellers are required to collect under the Use Tax Act...'

65 ILCS 5/8-11-1. Based upon the statutory provisions cited above, construction contractors should pay suppliers the 6.25% Use Tax liability and all local (HRMROT) tax reimbursement liabilities.

When purchasing tangible personal property from out of state, construction contractors should self-assess and remit Use Tax to the Department at the rate of 6.25%. As stated above, you may credit any tax paid in another state in respect to the sale, purchase, or use of such property, to the extent of the amount of such tax properly due and paid in such other state.

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,

Richard S. Wolters
Associate Counsel

RSW:mdb

