

This letter discusses digital photography. See 86 Ill. Adm. Code 130.2000 and 86 Ill. Adm. Code 140.101. (This is a GIL.)

August 16, 2021

Dear NAME:

This letter is in response to your letter dated January 10, 2019, 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:

I'm NAME, a PROFFESION based in Chicago, IL. I have been doing research on how to charge our clients for their custom PRODUCT1 and custom PRODUCT2 and it seems to be a gray area.

The document I found is included in this letter (Title 86 Part 130 Section 130.2000) and hasn't seen updates since 2000. I would like to request that this document be updated so that it will apply to modern 2019 PRODUCT3. The processing that is referenced in this document applies to PRODUCT4 and is not applicable to the age of PRODUCT3 with PROCESS1 and PROCESS2.

The products that we sell, as mentioned, are PRODUCT2 and PRODUCT1. These are all custom items and are different for each couple that we work with. I am unsure as to how I should be collecting sales tax.

Ideally, I could create a package for our couples and say that "Package X" includes 8 hours of PROCESS1 coverage, PROCESS2, and a 10x10 custom PRODUCT1 for \$\$\$\$\$. Or, if best, I can keep products separate and do "Package X" includes 8 hours of PROCESS1 and PROCESS2 for \$\$\$\$\$, and the custom PRODUCT1 is available a la carte and is on a separate invoice for \$\$\$\$.

I would of course like to submit the correct amount of sales tax and would appreciate any direction and further explanation.

I called in on 1/10/19 and talked to NAME, ID ####, and he suggested that I reach you, the Legal Office Team.

DEPARTMENT'S RESPONSE:

OCCUPATION1, OCCUPATION2, and other servicemen, are subject to Retailers' Occupation Tax on the PROCESS3 component of their total service charge when they sell products of PROCESS3.[35 ILCS 120/2] However, under the Department's regulation, the sale of PROCESS2 is not considered a sale of products of PROCESS3. 86 Ill. Adm. Code 130.2000(b)(3). Sales of PROCESS2 are subject to Service Occupation Tax. See 86 Ill. Adm. Code 140.101.

Under the Service Occupation Tax, servicemen are taxed on tangible personal property that they transfer incident to sales of service. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on the cost price if they are registered de minimis servicemen; or, (4) Use Tax on the 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.

It should be noted that for methods (3) and (4), a de minimis determine is made using a serviceman's annual aggregate cost price of tangible personal property transferred incident to the sales of service. Servicemen do not have the option of determining whether they are de minimis using a transaction-by-transaction basis. See 86 Ill. Adm. Code 140.109.

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. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers. 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. Servicemen may qualify as de minimis if they determine that their annual aggregate

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cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of a service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. 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. See 86 Ill. Adm. Code 140.108. Please note that the tax base for this method is the cost price of the tangible personal property actually transferred to the customer. It does not include the cost of supplies that the serviceman may need to produce the item unless the supplies are part of the item transferred to the customer.

The final method of determining tax liability may be used by de minimis servicemen not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their 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. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax.

For example, if a PRODUCT2 custom PRODUCT1 ("PRODUCT1") is sold as a separate item, and the serviceman calculates the tax using the first method, the tax is based on the separately stated selling price of the PRODUCT1. If the serviceman calculates the tax using the second method, the tax is based on 50% of the total selling price of the entire bill. If the serviceman is eligible and chooses to calculate the tax using the third method, the tax is based upon the cost price of the of tangible personal property transferred incident to the sales of service. Finally, if the serviceman is eligible and chooses to calculate the tax using the fourth method, the serviceman may pay Use Tax based on the PRODUCTS1 cost price of the tangible personal property to his supplier or may self-assess and remit Use Tax to the Department when making purchases of tangible personal property from unregistered out-of-State suppliers. Servicemen who are eligible to pay Use Tax rather than Service Occupation Tax under the fourth method of calculating tax are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability.

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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

TG:rkn