

Foreign commerce sales. Retailers' Occupation Tax does not apply where sellers ship goods by carrier or by mail, according to the terms of agreements with purchasers, and the seller delivers the goods from a point within Illinois to a point outside Illinois and the goods are not to be returned to Illinois. See 86 Ill. Adm. Code 130.605. (This is a GIL).

August 19, 2021

Dear NAME:

This letter is in response to your letter dated June 26, 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:

On behalf of our client, COMPANY1 ("COMPANY1"), we are submitting this correspondence to seek guidance regarding the application of Illinois sales and use tax for the transaction and circumstances noted below.

COMPANY1 purchases equipment from COMPANY2., a vendor located in Illinois and pays Illinois sales and use tax to the vendor on these transactions.

COMPANY1 then contracts with an independent third party, COMPANY3, to arrange for the equipment to be picked-up via freight carrier at COMPANY2 Illinois location and have that equipment subsequently delivered to COMPANY1's warehouse located in STATE, COUNTRY.

It is our understanding that the sale and export of goods to a foreign country (e.g., COUNTRY) is not subject to tax in Illinois under certain circumstances as noted in Illinois Reg. 86ILAC130.605(g), which in part states:

"Retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are

making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales."

For clarity, we believe a freight forwarder, forwarder, or forwarding agent is a company that organizes shipments for individuals or other companies and may also act as a carrier.

Upon inspection of the relevant freight documentation (enclosed), it displays that COMPANY2 is identified as the shipper, COMPANY1 is shown as the consignee, COMPANY3 as a third party for billing purposes and a named fourth party which is the transportation company being utilized (this can differ between deliveries).

It is our belief that under the circumstances described above, such sales transactions are considered interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax and that COMPANY1 has erroneously been charged tax.

We respectfully request that the Illinois Department of Revenue review the enclosed documentation as COMPANY1 wishes to pursue relief from the vendor for the tax charged on these transactions; however, to satisfy the vendor's requirements, COMPANY1 must first obtain clarification from the Department of Revenue to determine if Illinois sales and use tax is required to be paid on these transactions and under these circumstances.

Please find attached the relevant vendor invoices and related shipping documentation as well as a Power of Attorney form.

If you have any questions, please contact the undersigned.

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 to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales. 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.

The Department's regulation regarding Sales of Property Originating in Illinois, 86 Ill. Adm. Code 130.605(d) provides that tax does not apply to gross receipts from sales in which the seller either by carrier (when the carrier is not also the purchaser) or by

NAME
FIRM
August 19, 2021
Page 3

mail, under the terms of his agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State. The fact that the purchaser actually arranges for the common carrier or pays the carrier that effects delivery does not destroy the exemption. However, it is critical that the seller is shown as the consignor or shipper on the bill of lading. If the purchaser is shown as either the consignor or the shipper, the exemption will not apply.

Please note that under Section 130.605(g), retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales.

The result would be different if the purchaser received or picked up the goods prior to delivery to a freight forwarder. 86 Ill. Adm. Code 130.605(a)(1). If the property were delivered to the purchaser, or an agent of the purchaser, and not directly to the freight forwarder, then the sale would be subject to Illinois sales tax. This is so notwithstanding the fact that the purchaser may, after receiving physical possession of the property in this State, transport or send the property out of the State for use outside the State or for use in the conduct of foreign commerce.

To establish that the gross receipts from any given sale are exempt because the tangible personal property is delivered by the seller from a point within this State to a point outside this State under the terms of an agreement with the purchaser, the seller will be required to retain in his records, to support deductions taken on his tax returns proof that satisfies the Department that there was an agreement and a bona fide delivery outside this State of the property that is sold. See 86 Ill. Adm. Code 130.605(f).

Although your client may be able to claim the interstate commerce exemption, we cannot provide you with the determination you seek in the context of a General Information Letter.

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