

The Service Occupation Tax is a tax imposed upon servicemen engaged in the business of making sales of service in this State, based on the tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140. (This is a PLR.)

January 6, 2022

Dear NAME

This letter is in response to your letter dated February 12, 2021, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of our client, COMPANY ("COMPANY"), PARTNERSHIP ("PARTNERSHIP") respectfully requests a Private Letter Ruling pursuant to 2 Illinois Administrative Code 1200.110. An executed power of attorney is attached hereto as Exhibit "A."

COMPANY identifying information is set out as follows:

COMPANY
ADDRESS
Federal ID No.: ##-#####

This issue is not under consideration by the Illinois Department of Revenue in connection with an audit examination of any type, a refund

request, a voluntary disclosure agreement, an administrative hearing, or litigation for COMPANY.

COMPANY may make a similar request to a taxing jurisdiction of another state, upon review-of the laws and regulations of the state.

Documents

Power of Attorney (Exhibit A)

Statement of Relevant Facts

COMPANY is a STATE corporation headquartered in CITY, STATE. COMPANY has an employee that resides in Illinois. COMPANY purchases plastic debit and prepaid payment cards which are resold or given away to their business customers. The cards are initially ordered by COMPANY from either an Illinois printer, or printers located outside of Illinois. At the time the cards are printed, COMPANY pays a deposit to the printer, and takes title of the cards while they remain unfinished with the printer. COMPANY may also invoice their customer an initial fee for the cards before they are printed. After the initial printing of the cards, they may be subsequently personalized based on instruction from COMPANY'S customers. Prior to personalization, the cards are unusable and considered unfinished. Given these facts, the following scenarios are possible:

1. Cards are printed by an IL printer and:
 - a. The cards are personalized by the IL printer based on instructions received from COMPANY'S customers, as relayed to the printer by COMPANY. The personalized cards are shipped from the IL printer to COMPANY'S customers located within IL. COMPANY charges the customers for the personalized cards.
 - b. The cards are personalized by the IL printer based on instructions received from COMPANY'S customers, as relayed to the printer by COMPANY. The personalized cards are shipped from the IL printer to COMPANY'S customers located outside of IL. COMPANY charges the customers for the personalized cards
 - c. The cards are personalized by the IL printer based on instructions received from COMPANY'S customers, as relayed to the printer by COMPANY. The personalized cards are shipped from the IL printer to COMPANY'S

- customers located within IL. COMPANY'S customers receive these cards free-of-charge.
- d. The cards are personalized by the IL printer based on instructions received from COMPANY'S customers, as relayed to the printer by COMPANY. The personalized cards are shipped from the IL printer to COMPANY'S customers located outside of IL. COMPANY'S customers receive these cards free-of-charge.
 - e. The cards are not personalized, and are therefore unusable, and are subsequently destroyed by the IL printer.
2. Cards are printed by a non-IL printer and:
- a. The cards are personalized by the non-IL printer based on instructions received from COMPANY'S customers, as relayed to the printer by COMPANY. The personalized cards are shipped to COMPANY'S customers located within IL. COMPANY charges the customers for the personalized cards
 - b. The cards are personalized by the non-IL printer based on instructions received from COMPANY'S customers, as relayed to the printer by COMPANY. The personalized cards are shipped to COMPANY'S customers located within IL. COMPANY'S customers receive these cards free-of-charge.
 - c. The cards are not personalized, and are therefore unusable, and are subsequently destroyed by the printer.

Requested Ruling

COMPANY respectfully requests a private letter ruling confirming the following:

- 1. The purchase of personalized cards by COMPANY from an Illinois printer which are subsequently resold or provided free-of-charge and shipped directly by the Illinois printer to COMPANY'S customers located outside the state of Illinois are not subject to Illinois' Retailers' Occupation or Use tax.
- 2. Personalized cards purchased by COMPANY from an Illinois printer which are subsequently resold by COMPANY to Illinois customers are subject to Illinois Retailers' Occupation Tax. An Illinois Resale Certificate should be provided by COMPANY to the Illinois printer. COMPANY should collect Illinois Retailers' Occupation Tax, measured by the full cost charged by

- COMPANY to their customer (prepayment plus final payment), at the time the cards are shipped by the Illinois printer.
3. Personalized cards purchased by COMPANY, from an Illinois printer, which are subsequently delivered by the printer to recipients located in Illinois who receive the cards free-of-charge are subject to Illinois Use Tax. COMPANY should report Illinois Use Tax, measured by the amount paid to the Illinois printer (prepayment plus final payment), at the time the cards are shipped to the Illinois recipients.
 4. Personalized cards purchased by COMPANY from a printer located outside of Illinois, which are subsequently delivered by the printer to recipients located in Illinois who receive the cards free-of-charge are not subject to Illinois tax.
 5. Personalized cards purchased by COMPANY from a printer located outside of Illinois, which are subsequently resold by COMPANY to Illinois customers are subject to Illinois Retailers' Occupation Tax, measured by the cost charged by COMPANY to their customer (prepayment plus final payment), at the time the cards are shipped by the non-Illinois printer.
 6. Cards which are printed but not personalized and, therefore, not usable are destroyed. These cards are not subject to Illinois tax.

Authorities in Support of Requested Ruling

Statute(s), Rule(s), and Court Opinion:

- 35 ILCS § 120/1
- 86 Ill. Adm. Code § 130.605
- 86 Ill. Adm. Code § 150.201
- Illinois Private Letter Ruling, No. ST 87-0313-PLR, 05/05/1987
- *United Tech Corp v. Dep't of Revenue*, 107 Ill. App. 3d 1062, 63 Ill. Dec. 604, 438 N.E.2d 535 (App. 1st Dist. 1982)

Applicable Law

Sales of TPP shipped by the Seller at the Instruction of the Purchaser to Out-of-State Recipients Are Not Subject to Illinois Tax

Per 35 ILCS §120/1, a "sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first

subjected to a use for which it was purchased, for a valuable consideration.¹

The Retailers' Occupation Tax (ROT) applies to retail sales of property located in Illinois at the time of sale and delivered in Illinois to the purchaser.² However, the tax does not apply to gross receipts from sales in which the seller delivers the goods from a point in Illinois to a point outside of Illinois.³ Per Ill. Admin. Code 130.605, tax does not apply to "gross receipts from sales in which the seller, by carrier (when the carrier is not also the purchaser) or by mail, under the terms of his or her 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." It is necessary to provide that the seller - not the purchaser – is the consignor or shipper on the bill of lading. Specifically,

"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 or her records, to support deductions taken on his or her 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. The most acceptable proof of this fact will be:

- 1) If shipped by common carrier, a waybill or bill of lading requiring delivery outside this State;*
- 2) if sent by mail, an authorized receipt from the United States Post Office department for articles sent by registered mail, parcel post, ordinary mail or otherwise, showing the name of the addressee, the point outside Illinois to which the property is mailed and the date of the mailing; if the receipt does not comply with these requirements, other supporting evidence will be required;*
- 3) if sent by seller's own transportation equipment, a trip sheet signed by the person making delivery for the seller and*

¹ 35 ILCS § 120/1

² 86 Ill. Admin. Code § 130.605(a)

³ 86 Ill. Admin. Code § 130.605(c)(d)

*showing the name, address and signature of the person to whom the goods were delivered outside this State; or, in lieu thereof, an affidavit signed by the purchaser or his or her representative, showing the name and address of the seller, the name and address of the purchaser and the time and place of the delivery outside Illinois by the seller; together with other supporting data as required by Section **130.810** of this Part and by Section 7 of the Act."*⁴

As outlined in the Statement of Facts above, the printer ships the payment cards at the instruction of COMPANY, to recipients located either within or outside of Illinois. While COMPANY reimburses the printer for the costs of shipping, the printer coordinates the shipment via carrier or mail.

The Department of Revenue previously supported this position in a Private Letter Ruling. In the facts presented for consideration, advertising materials were mailed by an Illinois-based direct mail firm to addressees located outside of Illinois. The Department, while referencing the ambiguity of facts supporting the request, confirmed that "If the printer hires the direct mail firm, the mail firm is an agent of the printer and the subsequent direct mailings will be viewed as shipments by the printer into interstate commerce. No tax is due in this situation. If the client of the printer hires the mailing firm, the mailing firm is an agent of the client and by taking possession of the material in Illinois incurs an Illinois tax liability."⁵ In our case, COMPANY hires the printer who facilitates both the production of the cards, and the shipment of the cards to COMPANY'S customers.

TPP Sold or Given Away to Illinois Recipients is subject to Illinois Tax.

Cards resold by COMPANY to Illinois customers

Per 35 ILCS § 120/1, a "sale at retail" includes "any transfer of the ownership of or title to tangible personal property to a buyer when the property may be used or consumed by another person to whom the buyer transfers it without valuable consideration."⁶ Further, the Retailers' Occupation Tax (ROT) applies to retail sales of property located in Illinois at the time of sale and delivered in Illinois to the purchaser.⁷

⁴ 86 Ill. Admin. Code § 130.605(f)

⁵ Illinois Private Letter Ruling, No. ST 87-0313-PLR, 05/05/1987

⁶ 35 ILCS § 120/1

⁷ 86 Ill. Admin. Code § 130.605(a)

Therefore, in those instances when COMPANY purchases cards from a printer for subsequent resale to an Illinois customer, and the cards are shipped directly to the Illinois recipient at the instruction of COMPANY, COMPANY should collect and remit IL Retailer's Occupation Tax measured by the sales price to their customer.

Cards received by Illinois customers free-of-charge

In those instances when COMPANY instructs a printer to ship TPP to an IL recipient who receives the TPP free-of-charge, COMPANY should report and remit IL use tax due on the sales price of the TPP charged by the printer.

Taxability of customer prepayments made towards the purchase price of TPP

Prepayments made by COMPANY'S customers

As established in *United Tech. Corp v. Dep't of Revenue*⁸, prepayments received without transfer of ownership or title are not considered taxable gross receipts. Initial payments made by COMPANY'S customers to COMPANY do not result in a transfer of title or ownership of the printed cards. Until the cards are personalized, the cards are unusable and unfinished. In some instances, the unfinished cards are never personalized and are ultimately destroyed. As a result, no transfer of title to the cards takes place, thus no retail sale has occurred between COMPANY and their customer.

In those instances where cards are personalized, a final payment is made by COMPANY. The cards are then shipped by the printer per the customer's instruction. At this time, a retail sale has occurred whereby the title of the cards has transferred from COMPANY to the customer.

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⁸ *United Tech Corp v. Dep't of Revenue*, 107 Ill. App. 3d 1062, 63 Ill. Dec. 604, 438 N.E.2d 535 (App. 1st Dist. 1982)

In the event COMPANY issues a resale certificate to the printer for the purchase of the cards, COMPANY is responsible for remitting Illinois Retailers' Occupation Tax when the cards are resold to Illinois customers. COMPANY is responsible for remitting Illinois Use Tax if the cards are given away to Illinois recipients, at no charge to the recipients.

Destruction of TPP does not constitute a "use"

Unfinished, unusable cards

86 Ill. Admin. Code § 150.201 defines "use" as "the exercise by any person of any right of power over tangible personal property incident to the ownership of that property." Although title of the cards transfers to COMPANY at the time the initial prepayment is made to the printer, a true use of the property is not possible as the cards are unfinished. The cards are not usable until they are personalized. Therefore, the destruction of the cards prior to personalization does not constitute a "use" of the property subject to Illinois Use Tax.

Explanation of Grounds for Requested Ruling

Per Illinois guidance:

1. Cards that are resold or given away by COMPANY to customers or recipients located outside of Illinois are not subject to Illinois tax.
2. The resale of cards by COMPANY to customers located within Illinois are subject to IL ROT at the time the cards are shipped by the printer.
3. IL Use Tax is due by COMPANY when cards are given away to Illinois recipients who receive the cards free-of-charge, at the time the cards are shipped by the printer.
4. No tax is due on COMPANY'S purchase of the cards from an Illinois printer when those cards remain unfinished and are ultimately destroyed.

Authorities Contrary to Requested Ruling

Our review of the Illinois Statutes, case law, and guidance provided by the Illinois Department of Revenue did not result in findings which are contrary to the positions outlined in this request. Upon receiving any

contradictory guidance from the Department of Revenue, we will review the information accordingly.

Conclusion

Based upon the statutes, rules, and published rulings, COMPANY incurs a tax liability in Illinois only in those instances where cards are shipped to Illinois recipients. In those instances where cards are shipped to a recipient located outside of Illinois, no Illinois tax liability occurs. To the extent that unfinished cards are destroyed, no Illinois tax liability occurs. COMPANY respectfully requests the Department of Revenue's issuance of a private letter ruling in response to the information provided, and in confirmation of the previously outlined positions.

DEPARTMENT'S RESPONSE:

Retailer's Occupation Tax

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. See 86 Ill. Adm. Code 130.101. 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. These taxes comprise what is commonly known as "sales" tax in Illinois.

Service Occupation Tax

Retailers' Occupation Tax and Use Tax do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services (*i.e.*, servicemen) are taxed on tangible personal property transferred as an incident to sales of service. 86 Ill. Adm. Code 140.101. The transfer of tangible personal property to service customers may result in either Service Occupation Tax liability or Use Tax liability for servicemen, depending upon which tax base they choose to calculate their liability.

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 cost price if they are registered de minimis servicemen; or (4) Use Tax on 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.

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 are required to provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of sales of service. They are required to collect the corresponding Service Use Tax from their customers.

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 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 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. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit tax to the Department by filing returns and do not pay tax to their suppliers. They provide suppliers with Certificates of Resale for the tangible personal property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are 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 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 handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess, and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

Multi-Service Transaction – Secondary Servicemen

Multi-service situations exist where a primary serviceman subcontracts work to a secondary serviceman. See 86 Ill. Adm. Code 140.145. A primary serviceman engages the services of a secondary serviceman in order to obtain part or all of the products and services desired by the service customer. The point at which Service

Occupation Tax or Use Tax will be incurred depends upon whether the primary and secondary servicemen are registered or de minimis. In multi-service situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman, or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. 86 Ill. Adm. Code 140.301(a).

When both primary servicemen and secondary servicemen are registered, primary servicemen provide secondary servicemen with a Certificate of Resale. A primary serviceman would then incur Service Occupation Tax based upon the separately stated selling price of the property or 50% of the bill to the service customers. If the primary serviceman is registered and de minimis (that is, under the 35% threshold, or 75% for pharmacists and printers), he may choose to remit Service Occupation Tax to the Department based upon his cost price of tangible personal property purchased from the secondary serviceman. If the cost price of the tangible personal property is not separately stated by the secondary serviceman, the cost price will be deemed to be 50% of the total bill from the secondary serviceman. Upon selling their product, such servicemen are required to collect the corresponding Service Use Tax from their customers.

If an unregistered de minimis serviceman subcontracts service work to another unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman. This certification option is only available in multi-service situations when both the primary and secondary servicemen are unregistered and de minimis.

Transactions involving multiple servicemen work best if both the primary and secondary servicemen are registered. This will enable both parties to utilize Certificates of Resale. If the primary serviceman is registered and the secondary serviceman is not registered, it is possible that tax will be incurred at more than one point during the course of sale of a particular item. This will occur if the unregistered secondary serviceman has paid Use Tax with respect to an item of tangible personal property, then transfers that property to a primary serviceman who will, in turn, incur a Service Occupation Tax liability when transferring the item to the service customer.

Jurisdictional Issues – Service Occupation Taxes

If the Illinois Service Occupation Tax on a transaction is being remitted to the Department by the serviceman, the serviceman shall also pay any local service occupation tax to the Department on the same transaction if such serviceman engages in the business of making sales of service within a jurisdiction that has adopted a local

service occupation tax. If a purchase order is accepted outside this State but the tangible personal property which is sold incident to the sale of service is in the inventory of a serviceman located within a home rule municipality at the time of its sale (or is subsequently produced in the home rule municipality) then delivered in Illinois to the service customer, the place where the property is located at the time of the sale (or subsequent production in the municipality) will determine where the seller is engaged in business for local service occupation tax purposes with respect to such sale. See, for example, 86 Ill. Adm. Code 280.115.

Service Use Tax

The Service Use Tax is a privilege tax imposed on the privilege of using, in this State, tangible personal property that is received anywhere as an incident to a purchase of service from a serviceman. However, if the serviceman would not be taxable under the Service Occupation Tax Act despite all elements of the sale of service occurring in Illinois, then the tax imposed by the Service Use Tax Act does not apply to the use of such property in this State. Any evidence that property was sold by any person for delivery to a person residing in or engaged in business in this State shall be prima facie evidence that such property was sold for use in this State. The rate of the Service Use Tax is 6.25% of the serviceman's selling price of the tangible personal property transferred by the serviceman as an incident to a sale of service. 86 Ill. Adm. Code 160.101. The Service Use Tax shall be based on the selling price of the tangible personal property transferred incident to the sale of service if stated separately on the invoice from the serviceman. If not stated separately, then the tax will be imposed on 50% of the entire billing from the serviceman. However, the Service Use Tax which is collected by a de minimis serviceman who incurs Service Occupation Tax on his cost price of tangible personal property transferred incident to service, as provided at 86 Ill. Adm. Code 140.109, shall be based upon his cost price of tangible personal property transferred incident to his or her sales of service. 86 Ill. Adm. Code 160.115.

Ruling

The Company is headquartered in Oakland, California and has an employee who resides in Illinois. Because the Company has an employee in Illinois it is considered a "serviceman maintaining a place of business in this State." 35 ILCS 110/2. Every out-of-State serviceman maintaining a place of business in this State must register and collect Service Use Tax from service customers, unless such serviceman is authorized to pay Use Tax as provided in 86 Ill. Adm. Code 140.108. 86 Ill. Adm. Code 160.130(c).

The Company contracts with its customers to provide personalized debit or prepaid payment cards along with other services. Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. The Company has communicated to the Department that it qualifies as a de minimis serviceman and is not registered with the Department. Accordingly, for purposes of responding to the rulings

requested by the Company, the Department will treat the Company as an unregistered de minimis serviceman.

The Company has request rulings on 6 scenarios.

1. "The purchase of personalized cards by COMPANY from an Illinois printer which are subsequently resold or provided free-of-charge and shipped directly by the Illinois printer to COMPANY'S customers located outside the state of Illinois are not subject to Illinois' Retailers' Occupation or Use tax."

The Company may claim the interstate commerce exemption for materials shipped out of Illinois. Under the interstate commerce exemption, servicemen do not incur Service Occupation Tax liability on property that they resell as an incident to a sale of service under an agreement by which they are obligated to make physical delivery of the goods from a point in Illinois to a point outside Illinois, not to be returned to a point within Illinois, provided that such delivery is actually made. 86 Ill. Adm. Code 140.501.

2. "Personalized cards purchased by COMPANY from an Illinois printer which are subsequently resold by COMPANY to Illinois customers are subject to Illinois Retailers' Occupation Tax. An Illinois Resale Certificate should be provided by COMPANY to the Illinois printer. COMPANY should collect Illinois Retailers' Occupation Tax, measured by the full cost charged by COMPANY to their customer (prepayment plus final payment), at the time the cards are shipped by the Illinois printer."

As an unregistered de minimis serviceman, the Company should pay Use Tax to the Illinois printer based on the cost price of the cards. Except as provided in Section 140.145(a), when the Company purchases cards from the printer, the Company shall determine its cost price either by using the separately stated selling price of cards set forth on the invoice from the printer or, if no selling price is separately stated, 50% of the total invoice including labor and service charges, in the absence of proof (e.g., printers purchase invoices showing his cost price) of the consideration paid by the printer for the purchase of the cards. 86 Ill. Adm. Code 140.145(f)

If the printer is not registered to collect and remit tax, the Company must register, self-assess, and remit Use Tax to the Department. The Company is considered to be the end-user of the cards transferred incident to service. Consequently, the Company is not authorized to collect a "tax" from its customers. See 86 Ill. Adm. Code 140.108.

If the printer is an unregistered de minimis serviceman, the Company does not incur a Use Tax liability if the Illinois printer (i) has paid or will pay Use Tax on his or her

cost price of any tangible personal property transferred to the Company and (ii) certifies that fact in writing to the Company.

3. "Personalized cards purchased by COMPANY, from an Illinois printer, which are subsequently delivered by the printer to recipients located in Illinois who receive the cards free-of-charge are subject to Illinois Use Tax. COMPANY should report Illinois Use Tax, measured by the amount paid to the Illinois printer (prepayment plus final payment), at the time the cards are shipped to the Illinois recipients."

The Company should pay Use Tax to the printer as explained in the previous answer. The Company has communicated to the Department that the expression "free of charge" means that the Company does not separately state the cost of the cards on the invoice to the customer. This does not change the Department's analysis.

4. Personalized cards purchased by COMPANY from a printer located outside of Illinois, which are subsequently delivered by the printer to recipients located in Illinois who receive the cards free-of-charge are not subject to Illinois tax.

When the Company purchases cards from an out-of-state printer, has the out-of-state printer personalize the cards, and has the out-of-state printer ship the cards to Illinois recipients, the Company incurs Use Tax liability. The Company must self-assess the tax and remit it directly to the Department of Revenue. The Company would receive credit against its Illinois Use Tax obligations for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310(a)(3).

5. "Personalized cards purchased by COMPANY from a printer located outside of Illinois, which are subsequently resold by COMPANY to Illinois customers are subject to Illinois Retailers' Occupation Tax, measured by the cost charged by COMPANY to their customer (prepayment plus final payment), at the time the cards are shipped by the non-Illinois printer."

See the answer to ruling request 4. It is the Department's understanding in this scenario the cost for the cards are separately stated on the invoice to its customer. This does not change the Department's analysis.

6. Cards which are printed but not personalized and, therefore, not usable are destroyed. These cards are not subject to Illinois tax.

If the cards are printed and destroyed outside of Illinois, the Company does not incur any Illinois tax liability. If the cards are printed and destroyed in Illinois, the

Company incurs Use Tax on the fair market value of the cards on the date the cards are destroyed. However, if the Company paid Use Tax to an Illinois supplier at the time the cards were purchased, the Company would not incur any Use Tax liability when the cards are destroyed. If the cards were purchased out-of-State and destroyed in Illinois, the Company would receive credit for any tax properly due and paid in another state.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, 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
Chairman – Private Letter Ruling Committee

RSW:rkn