

This letter discusses “de minimis” servicemen who incur Service Occupation Tax on their cost price as well as the computation of the cost ratio. See 86 Ill. Adm. Code 140.105; 86 Ill. Adm. Code 140.106. (This is a PLR.)

June 7, 2022

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated August 16, 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, CORPORATION (“CORPORATION”) 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 CORPORATION 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:

In accordance with 2 Ill. Adm. Code 1200.110, we respectfully request a private letter ruling on behalf of our client, CORPORATION (“CORPORATION”). A Form IL-2848- Power of Attorney is enclosed. CORPORATION is a national auto glass repair and replacement service and operates in all 50 states. CORPORATION offers two distinct services: glass repair and glass replacement. CORPORATION operates mobile repair units and will conduct glass repairs and replacements at a customer's location. CORPORATION also operates fixed locations where customers may have their automobile glass repaired or replaced at CORPORATIONS location. CORPORATION

partners with most automobile insurance companies to repair glass damage or replace glass in accordance with the terms of the insurance contract. Automobile owners may also purchase glass repair and replacement services independent of their insurance coverage.

CORPORATION can repair a windshield when there is a small chip or crack, and the damage is not in front of a camera or sensor. If the glass cannot be repaired using the proprietary resin, CORPORATION will replace the entire window. To repair a windshield, CORPORATION injects an exclusive and proprietary resin into the chip. After the resin is fully cured, it is polished to near imperceptibility. When the glass is repaired, CORPORATION does not transfer any tangible personal property to the customer other than the resin injected into the crack.

When CORPORATION repairs the windshield, the repair service is billed as a bundled charge for both the labor and the resin. CORPORATION does not itemize the charge for the resin separately from the charge for labor. The cost of the resin is less than 2% of the total charge of the repair service. When the glass must be replaced, CORPORATION itemizes the charge for the replacement glass separately from the installation labor incurred to replace the glass. In the aggregate, CORPORATIONS cost of materials used in their repair and replacement services, which includes replacement glass and repair resin, is approximately 20% of the total charges for all repairs and replacements of glass.

CORPORATION does make over the counter retail sales in Illinois of items like windshield wiper blades and glass. CORPORATION does make wholesale sales of automobile glass. In previous years, CORPORATIONS wholesale sales were a larger percentage of its overall business. However, CORPORATION has recently curtailed their wholesale sales of glass. This has impacted CORPORATIONS cost ratio in Illinois.

Relevant Law and Ruling Request

The DOR has previously ruled that a serviceman such as CORPORATION may calculate the tax base in one of four ways:

1. Separately stated selling price of tangible personal property;
2. 50% of the serviceman's entire bill;
3. Service Occupation Tax ("SOT") on the serviceman's cost price if the serviceman is a registered de minimis serviceman; or

4. Use Tax on the serviceman's cost price if the serviceman is de minimis and is not otherwise required to be registered under the Retailer's Occupation Tax Act.¹

Illinois imposes the SOT on "all persons engaged in the business of making sales of service (referred to as "servicemen") on all tangible personal property transferred as an incident of a sale of service...."² Persons such as CORPORATION that engage in the business of repairing property belonging to others, including automobile repairmen, are not required to remit Retailers' Occupation Tax.³ Servicemen may itemize the selling price of tangible personal property that is transferred as an incident of selling a service.⁴ If the serviceman does not itemize the selling price of tangible personal property, the selling price is deemed to be 50% of the entire bill issued to the customer.⁵

However, if a service provider's cost ratio between the tangible personal property transferred during the service and the serviceman's total annual gross receipts from all sales of service is less than 35%, the serviceman is a de minimis serviceman.⁶ De minimis servicemen remit tax to Illinois in one of two ways. If the serviceman is not required to be registered as a retailer in Illinois, and has not voluntarily registered as a retailer, the serviceman owes use tax to suppliers that are registered in Illinois, or the serviceman must remit use tax directly to the DOR.⁷ The serviceman should not issue resale certificates.⁸ The serviceman must remit use tax on all sales of services for a given year and cannot use other methods to determine his Illinois tax liability.⁹ The serviceman does not collect tax from service customers, but the serviceman may collect reimbursement of the use tax that has been paid.¹⁰

The second method applies to a serviceman that is required to be registered as a retailer under the Retailers' Occupation Tax Act.¹¹ Rather than remit Use Tax, this serviceman incurs SOT on his cost price of tangible personal property transferred incident to sales of service.¹² The serviceman should issue resale certificates to his suppliers.¹³ The

¹ Private Letter Ruling ST 96-0279PLR (July 31, 1996)

² 35 Ill. Comp. Stat. 115/3

³ 86 Ill. Admin. Code 130.2015(c)(1)

⁴ 35 Ill. Comp. Stat. 115/3-10 and 86 Ill. Admin. Code 140.106(a)(1)

⁵ 35 Ill. Comp. Stat. 115/3-10 and 86 Ill. Admin. Code 140.106(a)(2)

⁶ 86 Ill. Admin. Code 140.105(a) and 140.201(b)

⁷ 86 Ill. Admin. Code 140.108(a) and (c)

⁸ 86 Ill Admin. Code 140.108(a)(1)

⁹ 86 Ill Admin. Code 140.108(a)(4)

¹⁰ 86 Ill. Admin. Code 140.108(a)(3)

¹¹ 86 Ill. Admin. Code 140.109

¹² 86 Ill. Admin. Code 140.109(a)

¹³ 86 Ill. Admin. Code 140.109(a)(1)

serviceman must remit SOT based on his cost price for all sales of service in a given fiscal year and cannot use other methods of determining the tax on a transaction by transaction basis.¹⁴ The SOT must be collected from the customer, but the tax does not need to be separately stated on the billing unless requested by the service customer.¹⁵

A serviceman that meets the de minimis threshold may elect to pay SOT on the selling price of tangible personal property.¹⁶ If the serviceman makes this election, the serviceman collects SOT based on the separately stated selling price of tangible personal property.¹⁷ If there is no separately stated selling price, tax is collected on the greater of the serviceman's cost price of the tangible personal property transferred or 50% of the entire customer bill.¹⁸

Ruling Request:

Based on the facts presented, we respectfully request a response to the following questions:

1. Must CORPORATION include over the counter retail sales and wholesale sales of glass in the calculation to determine their cost ratio or should only sales of repair and replacement services be used to determine their cost ratio?
2. Is CORPORATION required to be registered under Section 2a of the Retailers' Occupation Tax Act since they do make retail sales of tangible personal property in Illinois?
3. If CORPORATION is not required to be registered under Section 2a of the Retailers' Occupation Tax Act, may CORPORATION voluntarily register under this section?
4. Is CORPORATION required to include the cost of tangible personal property used to replace glass in the calculation of the cost ratio even though the glass used in replacement services is separately stated to the customer?
5. If CORPORATION is not required to be registered, does not voluntarily register under Section 2a of the Retailers' Occupation Tax Act, and their cost ratio is less than 35%, must CORPORATION remit Use Tax on all materials used for all repair and replacement services performed in Illinois

¹⁴ 86 Ill. Admin. Code 140.109(a)(5)

¹⁵ 86 Ill. Admin. Code 140.109(a)(4)

¹⁶ 86 Ill. Admin. Code 140.109(b)

¹⁷ 86 Ill. Admin. Code 140.106(a)(1)

¹⁸ 86 Ill. Admin. Code 140.106(a)(2)

- even if they separately state the price of glass used in replacement services?
6. If CORPORATION is required to be registered or is voluntarily registered under Section 2a of the Retailers' Occupation Tax Act, and if their cost ratio is less than 35%, must CORPORATION remit Service Occupation Tax on their cost basis all materials used for all repair and replacement services performed in Illinois even if they separately state the price of glass used in replacement services?
 7. May CORPORATION elect to pay SOT on their selling price even if they meet the de minimis threshold under 86ILAC140.109(b) and if so how is that election made?
 8. If CORPORATION elects to pay SOT on their selling price, how must CORPORATION collect tax?
 - a. Is tax collected on 50% of the amounts charged to their customers for all types of sales (*i.e.*, sales of repairs and sales of replacements)?
 - b. Or is tax collected based upon how the labor and materials are charged to the customer? For example, must CORPORATION collect tax on 50% of the total invoice for repair services provided where the labor and materials are not separately stating and collect tax on the sales price of tangible personal property for replacement services when the sales price of tangible personal property is charged separately from labor charges?

We believe the questions should be answered as follows:

1. CORPORATION should not include the over-the-counter retail sales or wholesale sales in the cost ratio calculation because these sales are taxed under the Retailers' Occupation Tax.¹⁹ Only sales of services and the cost of materials transferred to customers as part of rendering a service are included when determining the cost ratio.²⁰
2. Yes, CORPORATION is required to be registered as a retailer due to the sales of tangible personal property made to Illinois customers that are not sold incident to a service.
3. Yes, CORPORATION may voluntarily register as a retailer if they are not already required to register as a retailer.
4. CORPORATION must include the cost of tangible

¹⁹ 35 Ill. Comp. Stat. 120/2(a)

²⁰ 86 Ill. Admin. Code 140.105(c)

personal property transferred incident to a service regardless of how CORPORATION states the charges of the materials on their invoices because the cost ratio is calculated on an annual aggregate basis and is not determined on a transaction-by-transaction basis.²¹

5. If CORPORATION is not required to register and has not registered as a retailer and their cost ratio is less than 35%, CORPORATION must remit use tax on all materials used for all repair and replacement services performed in Illinois regardless of how the services are billed to their customers. CORPORATION may collect a reimbursement of the tax from their customers.²²
6. If CORPORATION is required to register, or voluntarily registers, as a retailer and their cost ratio is less than 35%, CORPORATION must collect and remit Service Occupation Tax from their customers. The tax base is CORPORATIONS cost of the materials transferred to their customers when performing the repair and replacement services.²³
7. Yes, CORPORATION may elect to incur SOT liability even if they meet the de minimis threshold.²⁴ CORPORATION has always in the past and continues to collect sales tax on the separately stated price of tangible personal property on its billings to customers. Therefore, under 86ILAC140.109(b) CORPORATION has elected to collect sales tax from their customers on the separately stated selling price of the tangible personal property transferred to the customer on the billings.
8. CORPORATION must collect SOT on the sales price of tangible personal property transferred to customers as part of a service the sales price of tangible personal property if separately stated from labor charges.²⁵ If CORPORATION does not separately state the price of tangible personal property transferred when performing services, the tax base is 50% of the entire charge made to their customer.

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DEPARTMENT'S RESPONSE:

²¹ 86 Ill. Admin. Code 140.105(d) and (e)

²² 86 Ill. Admin. Code 140.108(a){3}

²³ 86 Ill. Admin. Code 140.109(a)(5)

²⁴ 86 Ill. Admin. Code 140.109(b)

²⁵ 86 Ill. Admin. Code 140.106(a)(l)

²⁶ 86 Ill. Admin. Code 140.106(a)(2)

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 35 ILCS 120/2; 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

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 a service. See 86 Ill. Adm. Code 140.101. The transfer of tangible personal property to service customers may result in either Service Occupation Tax liability (which includes local taxes) or Use Tax liability for servicemen, depending upon which tax base they use to calculate their liability. Servicemen who make retail sales, even if those sales are a small part of their business, are required to register with the Department and remit Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.701.

Servicemen may calculate their tax liability in one of four ways: (1) Service Occupation Tax on the separately-stated selling price of tangible personal property transferred as part of the service; (2) Service Occupation Tax on 50% of the serviceman's entire bill; (3) Service Occupation Tax on the serviceman's cost price if the serviceman is a registered *de minimis* serviceman; or (4) Use Tax on the serviceman's cost price if the serviceman is *de minimis* and is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 140.105; 86 Ill. Adm. Code 140.106.

Using the first method, the Service Occupation Tax is based on the separately stated selling price of the tangible personal property transferred. Servicemen who do not wish to separately state the selling price of the tangible personal property transferred, must assess the Service Occupation Tax on 50% of the entire bill to their service customers. See 86 Ill. Adm. Code 140.106(a). Regardless of which method is used, the tax base cannot be less than the cost price of the tangible personal property transferred. *Id.* Servicemen who incur Service Occupation Tax on their selling price should provide Certificates of Resale to their suppliers when purchasing tangible personal property that will be transferred to service customers and are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106(b) and (e).

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 140.109.

The cost ratio is a measure of the amount of tangible personal property transferred with a service. It is calculated by comparing the serviceman's product cost to his total income from services. The cost of materials that are not transferred to customers incident to a service, such as those sold at retail, removed from inventory for use, or incorporated into repairs of real estate, must be excluded when determining the cost ratio. See 86 Ill. Adm. Code 140.105(c).

Registered de minimis servicemen are authorized to pay Service Occupation Tax 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. See 86 Ill. Adm. Code 140.109(a)(1) and (a)(4).

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 to his 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 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.

The final method of determining tax liability would not apply in your case since, as stated in the summary of facts, "CORPORATION does make over the counter retail sales in Illinois of items like windshield wiper blades and glass."

We now turn to a discussion of the application of the law to your ruling request. The Department's responses follow the numerical order of your questions.

Ruling Request

1. Must CORPORATION include over the counter retail sales and wholesale sales of glass in the calculation to determine their cost ratio or should only sales of repair and replacement services be used to determine their cost ratio?
Response - The cost of materials that are not transferred to customers incident to a service, such as those sold at retail, removed from inventory for use, or incorporated into repairs of real estate, must be excluded when determining the cost ratio. See 86 Ill. Adm. Code 140.105(c).
2. Is CORPORATION required to be registered under Section 2a of the Retailers' Occupation Tax Act since they do make retail sales of tangible personal property in Illinois?
Response – Yes, Section 2a of the Retailers' Occupation Tax Act provides that “[i]t is unlawful for any person to engage in the business of selling tangible personal property at retail in this State without a certificate of registration from the Department.” 35 ICLS 120/2a.
3. If CORPORATION is not required to be registered under Section 2a of the Retailers' Occupation Tax Act, may CORPORATION voluntarily register under this section?
Response – CORPORATION is required to be registered under the Retailers' Occupation Tax Act, because it makes retail sales of tangible personal property in Illinois. 35 ILCS 120/2a.
4. Is CORPORATION required to include the cost of tangible personal property used to replace glass in the calculation of the cost ratio even though the glass used in replacement services is separately stated to the customer?
Response – Yes, the cost of materials that are transferred to customers incident to a service is included in the cost ratio. See 86 Ill. Adm. Code 140.105(c).
5. If CORPORATION is not required to be registered, does not voluntarily register under Section 2a of the Retailers ' Occupation Tax Act, and their cost ratio is less than 35%, must CORPORATION remit Use Tax on all materials used for all repair and replacement services performed in Illinois even if they separately state the price of glass used in replacement services?
Response – CORPORATION is required to be registered for the Retailers' Occupation Tax because it makes retail sales of tangible personal property in Illinois. 35 ILCS 120/2a.
6. If CORPORATION is required to be registered or is voluntarily registered under Section 2a of the Retailers' Occupation Tax Act, and if their cost ratio is less than 35%, must CORPORATION remit Service Occupation Tax on their cost basis for all materials used for all repair and replacement services performed in Illinois even if they separately state the price of glass used in replacement services?

Response - Even though a serviceman meets the de minimis threshold and is otherwise eligible to pay Service Occupation Tax on his cost price, he can nevertheless opt to pay Service Occupation Tax on the selling price of the tangible personal property transferred to service customers. See 86 Ill. Adm. Code 140.109(b). However, a de minimis serviceman incurring Service Occupation Tax liability on his cost price who does not opt to pay Service Occupation Tax on selling price must remit Service Occupation Tax on cost price on all taxable sales of service for a given fiscal year. He cannot utilize other methods of determining his Service Occupation Tax liability on a transaction-by-transaction basis. See 86 Ill. Adm. Code 140.109(a)(5).

7. May CORPORATION elect to pay SOT on their selling price even if they meet the de minimis threshold under 86 Ill. Adm. Code 140.109(b) and if so how is that election made?

Response – Even though a serviceman meets the de minimis threshold and is otherwise eligible to pay Service Occupation Tax on his cost price, he can nevertheless opt to pay Service Occupation Tax on the selling price of the tangible personal property transferred to service customers. See 86 Ill. Adm. Code 140.190(b). However, a de minimis serviceman incurring Service Occupation Tax liability on his cost price who does not opt to pay Service Occupation Tax on selling price must remit Service Occupation Tax on cost price on all taxable sales of service for a given fiscal year. He cannot utilize other methods of determining his Service Occupation Tax liability on a transaction-by-transaction basis. See 86 Ill. Adm. Code 140.109(a)(5). A serviceman may record the election under Section 140.109(b) to pay Service Occupation Tax on selling price in his books and records.

8. If CORPORATION elects to pay SOT on their selling price, how must CORPORATION collect tax?
- Is tax collected on 50% of the amounts charged to their customers for all types of sales (*i.e.*, sales of repairs and sales of replacements)?
 - Or is tax collected based upon how the labor and materials are charged to the customer? For example, must CORPORATION collect tax on 50% of the total invoice for repair services provided where the labor and materials are not separately stating and collect tax on the sales price of tangible personal property for replacement services when the sales price of tangible personal property is charged separately from labor charges?

Response – Even though a serviceman meets the de minimis threshold and is otherwise eligible to pay Service Occupation Tax on his cost price, he can nevertheless opt to pay Service Occupation Tax on the selling price of the tangible personal property transferred to service customers. See 86 Ill. Adm. Code 140.109(b). He may pay Service Occupation Tax on 1) the separately stated selling price of the tangible personal property transferred incident to service as shown on billings to the

service customer; or 2) on 50% of the entire customer bill if the selling price of the tangible personal property transferred is not separately shown on billings to the service customer. However, in no event can the Service Occupation Tax be based on an amount less than the serviceman's cost price of the tangible personal property being transferred. See 86 Ill. Adm. Code 140.106. Depending on the type of service rendered, some customers could be billed without a breakout of the selling price of tangible personal property transferred and some customers could be billed with a breakout of the selling price of tangible personal property transferred. It should be noted that a registered de minimis serviceman who is authorized to pay Service Occupation Tax based on the cost price may elect to pay tax on the separately stated selling price, or 50% of the bill, but whichever method is chosen, (cost or selling price), must be followed for the entire fiscal year. See 86 Ill. Adm. Code 140.109(a)(5). See also 86 Ill. Adm. Code 140.110, Example of Methods Used by Servicemen to Determine Liability.

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,

Samuel J. Moore
Private Letter Ruling Committee Chairman

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