

A contractor who plants trees pursuant to a conservation plan agreement is subject to Use Tax. See 86 Ill. Adm. Code 130.1940. (This is a GIL.)

July 19, 2022

NAME/ADDRESS

Dear Mr. XXX:

This letter is in response to your letter dated August 25, 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.

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:

Subject: Regulations of Sales Tax on Materials Sold to CUSTOMER for Conservation Purposes

Dear Sir or Madam:

COMPANY is an STATE Limited Liability Company with offices in STATE1 and STATE2. COMPANY provides products and services to CUSTOMERS to enhance agricultural and conservation goals on their land.

Our work involves being contracted by CUSTOMERS to establish conservation practices on their land. These conservation practices are typically enrolled in programs sponsored by the US Department of Agriculture, the Illinois Department of Agriculture, or the Illinois Department of Natural Resources (e.g. the Conservation Reserve Program). These agencies "cost share" the conservation practices by providing to CUSTOMERS a reimbursement of the costs to establish and manage the practice (i.e. the cost of our products and services). However, these agencies typically do not reimburse the costs of any sales tax charged to CUSTOMERS.

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One significant issue that we have come across is the lack of specificity in state regulations regarding sales tax on materials sold to CUSTOMERS for conservation purposes. Specifically, our central question is: **Should sales tax be charged on trees and tree shelters when sold to CUSTOMERS for the purposes of establishing conservation practices?**

Regarding **PRODUCT1**, the Illinois Department of Revenue issued a letter on April 4, 2014 (written by Cara Bishop, Associate Council) concluding that **PRODUCT1** are not considered "farm machinery or equipment used in production agriculture", and are therefore not exempt from sales tax under 86 Ill. Adm. Code 130.305. However, the question now at hand does not relate to **PRODUCT1** used in "production agriculture" but to **PRODUCT1** used for conservation purposes.

PRODUCT2 are plastic tubes or mats that protect **PRODUCT1** from deer, weeds, and other pressures while **PRODUCT1** are small. They are essential for successful establishment of conservation practices, and, just like the **PRODUCT1** themselves, are "cost-shared" by the government agencies listed above.

I request a written ruling on the topic presented above. Furthermore, if the **PRODUCT1** and **PRODUCT2** are exempt from sales tax, what steps must a business take to ensure proper documentation of the tax-exempt sales?

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. 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. Purchases of tangible personal property are subject to Illinois sales tax unless a purchase qualifies for an exemption under Illinois law. Although there are numerous sales tax exemptions available, currently there is no exemption for sales of tangible personal property to be used for conservation purposes. See 86 Ill. Adm. Code 130.120 for information on types of nontaxable transactions.

While it is unclear from your ruling request whether the sales of trees pursuant to a conservation plan includes planting the trees, we want to make you aware of a different tax result which could apply in such case. Please see 86 Ill. Adm. Code Section 130.1965(c) and 86 Ill. Adm. Code 130.1940(c)(2) which address the applicable tax when selling and installing plants such as trees.

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As to the tax consequences of a “tree shelter” even if installed, would depend on whether it is incorporated into the real estate or remains tangible personal property and thus, be subject to the Retailers’ Occupation Tax. For purposes of the Illinois sales tax laws, the Department uses an intention test to determine whether items remain tangible personal property after installation or become part of realty. See for example ST 19-0003-GIL (02/27/2019).

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