

This letter discusses the Department's regulation for sales of containers, wrapping and packing materials and related products as set forth at 86 Ill. Adm. Code 130.2070. (This is a GIL.)

November 2, 2022

NAME/ADDRESS

Dear Ms. XXX:

This letter is in response to your letter dated July 25, 2022, 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 Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Further, the Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject of the request, the Department will decline to issue a letter ruling on the subject." 2 Ill. Adm. Code 1200.110(a)(3)(D). The Department recently met and determined that it is declining to issue a Private Letter Ruling in response to your request. We hope, however, the following General Information Letter will be helpful in addressing your questions. In your letter you have stated and made inquiry as follows:

We believe that our products are exempt from Illinois sales and use tax based on: "TITLE 86: REVENUE PART 130 RETAILERS' OCCUPATION TAX Section 130.2070 Sales of Containers, Wrapping and Packing Materials and Related Products". We are requesting a Private Letter Ruling.

We only recently learned about the possible exemption and we are current with all prior sales & use tax filings. We are requesting the Private Letter Ruling for all future tax filings.

Our Products:

Our business designs and sells molded pulp packaging at 3rd party contract manufactures outside of Illinois. This type of packaging is similar to egg cartons and is used to package products for retail sales and as protective packaging during shipping. Please see our website ADDRESS2 for more information.

Our Customers:

Our customers range from small businesses to large global companies. We sell small quantities on our website and larger quantities via wholesale. Our packaging is used to package a wide range of products for resale, including foodstuff and consumer products.

Tax Exempt Product Type:

We believe that our products are tax exempt based on: "TITLE 86 REVENUE PART 130 RETAILERS' OCCUPATION TAX Section 130.2070 Sales of Containers, Wrapping and Packing Materials and Related Products"

b) Sales for Resale

- 1) Sellers of containers to purchasers who sell tangible personal property contained in such containers to others are deemed to make sales of such containers to purchasers for purposes of resale, the receipts from which sales are not subject to the Retailers' Occupation Tax, if the purchasers of such containers transfer the ownership of the containers to their customers together with the ownership of the tangible personal property contained in such containers.

Please let us know if you need any additional information to review our request.

If our product type qualifies for exemption, please advise if we still need to file returns with My Tax Illinois or if we should close our account.

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

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or consumption. 86 Ill. Adm. Code 130.101. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. Id. 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. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. However, the sale of tangible personal property for the purpose of resale is not taxable so long as the purchaser provides the seller with a Certificate of Resale in accordance with 86 Ill. Adm. Code 130.1405. 35 ILCS 120/2c; 86 Ill. Adm. Code 130.1405.

Sellers of containers to purchasers who sell tangible personal property contained in such containers to others are deemed to make sales of such containers to purchasers for purposes of resale, the receipts from which sales are not subject to the Retailers' Occupation Tax, if the purchasers of such containers transfer the ownership of the containers to their customers together with the ownership of the tangible personal property contained in such containers. For example, a sale of fruit boxes to a packer who fills the boxes with fruit and sells the fruit in such boxes is a sale of the boxes to the packer for resale by him. 86 Ill. Adm. Code 130.2070(b)(1)-(2).

"Containers" includes all containers, wrapping and packing materials, bags, twines, container handles, wrapping papers, gummed tapes, cellophane, boxes, bottles, drums, cartons, sacks or other packing, packaging, containing and wrapping materials in which tangible personal property may be contained. 86 Ill. Adm. Code 130.2070(a).

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,

Katarzyna Kowalska
Associate Counsel

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