

This letter discusses sales in interstate commerce that originate in Illinois to locations outside Illinois never to return. Appropriate documentation must be obtained in support of sales in interstate commerce and for resale. See 86 Ill. Adm. Code 130.605 and 130.1405. (This is a GIL).

May 10, 2023

COMPANY
ADDRESS

Dear NAME:

This letter is in response to your letter dated April 18, 2023, 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:

I would like to confirm if the interstate or foreign commerce exemptions as well as if the resale or manufacturing exemptions may apply in specific situations below when the purchaser is from out-of-state or out-of-country (neither registered in IL nor required to be). Please note, that in each situation, the **Title is transferred at the dock of the seller and a [sic] when common carrier or freight forwarder is providing the transportation, the purchaser is hiring them/directing the seller to transfer the materials to them.**

Scenario 1 –

Out-of-state purchaser requests to purchase materials via phone or internet from an in-state seller. Purchaser, as part of contract with seller, directs seller to "deliver" the materials at the seller's dock/warehouse to the common carrier/shipping company. The purchaser has

arranged/engaged the common carrier/shipping company to pick up the materials and ship them directly out of state. The **title** to the materials transfer [sic] to the purchaser once the materials are picked-up by the common carrier/contract carrier/private carrier or if they pick up via their own truck.

1. Is this sale deemed to be an in-state sale sourced/taxed in IL or an exempt inter-state transaction when the shipper is a common carrier?
 - a. If an exempt inter-state transaction, what documentation must the seller secure?
2. Does the answer above change if the shipper is instead a contract carrier (transportation services negotiated under contract with unrelated 3rd party)?
3. If taxable, may the purchaser claim a resale exemption when a 3rd party carrier is used?
 - a. May purchaser claim a resale exemption when picking up with their own truck?
 - b. May purchaser claim a manufacturing exemption if when [sic] 3rd party carrier is used?
 - c. May purchaser claim a manufacturing exemption when picking up with their own truck?
 1. If able to claim the resale exemption, use CRT-61 (or letter with all required information) noting authorized to do business out-of-state and not selling to IL customers, correct?
 2. If able to claim the manufacturing exemption, use ST-587 (or letter with all required information), correct?

Scenario 2 –

Same facts as above, however, the out-of-country/foreign purchaser is not registered in any US state, **does not have a US FEIN, but does have a foreign tax ID (VAT or other)**. Again the foreign purchaser will place the order from outside IL, will engage the 3rd party unrelated carrier/forwarding agent/freight forwarder and direct the seller to transfer the materials at the Sellers [sic] dock to the forwarder for shipment directly out of the country.

4. Is this sale deemed to be an in-state sale sourced/taxed in IL or a foreign commerce transaction when the shipper is a common carrier/contract carrier/forwarding agent/freight forwarder?
 - a. If an exempt foreign transaction, what documentation must the seller secure?

5. If taxable, may the foreign purchaser claim a resale exemption when a 3rd party carrier is used?
 - a. May purchaser claim a resale exemption when picking up with their own truck?
 - b. May purchaser claim a manufacturing exemption if when 3rd party carrier is used?
 - c. May purchaser claim a manufacturing exemption when picking up with their own truck?
3. If able to claim the resale exemption, use CRT-61 (or letter with all required information) noting authorized to do business out-of-country and not selling to IL customers?
4. If able to claim the manufacturing exemption, use ST-587 (or letter with all required information), correct?

If more convenient for you to give me a call, please feel free to do so.

Thank you for your time,

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail 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.

Where tangible personal property is located in Illinois or subsequently produced in Illinois at the time of its sale, and then delivered to the purchaser in Illinois, the seller is taxable if the sale is at retail. 86 Ill. Adm. Code 130.605(a). The place at which the contract of sale or contract to sell is negotiated and executed and the place at which title to the property passes to the purchaser are immaterial. Further, the place at which the purchaser resides is also immaterial. 86 Ill. Adm. Code 130.605(a)(3).

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 reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sale. See 86 Ill. Adm. Code 150.130. If the retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

Mere possession in Illinois is considered a use. Consequently, if the purchase occurs in Illinois, the purchaser must pay the Use Tax to the retailer. Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State immediately transports the property out of this State for use outside the State. See 86 Ill. Adm. Code 130.605(a)(2). The State of Illinois has no specific exemption for purchases by foreign or domestic travelers if the property is delivered and used in Illinois. Section 130.605 identifies several exceptions to this rule.

Section 130.605(d) states that the gross receipts from such sales are not subject to tax when a sale is conducted in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made. Such sales are sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax. Even if the purchaser arranges for the common carrier or pays the carrier who is to make the delivery, the sale will still be exempt. 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. 86 Ill. Adm. Code 130.605(d).

Section 130.605(f) provides that the seller will be required to retain in their records documentation to support any deductions taken on their tax returns. Such documentation must demonstrate there was an agreement between the seller and the purchaser for the seller to deliver the tangible personal property from inside the State to a point outside the State and that there was a bona fide delivery outside the State to the Department's satisfaction. Depending on the mode of delivery, the most acceptable proofs include:

- 1) If shipped by common carrier, a waybill or bill of lading requiring delivery outside the State;
- 2) if sent by mail, an authorized receipt from the U.S. Post Office 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 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 [the purchaser's] 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 and 35 ILCS 120/7.

86 Ill. Adm. Code 130.605(f).

Your letter has also raised the question about a direct sale to a customer that will be made into international commerce. If applicable to your situation, please review 86 Ill. Adm. Code 130.605 for more information regarding these types of transactions. Section 130.605(d) states that the gross receipts from such sales are not subject to tax when a sale is conducted in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made. Such sales are sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax. The exemption also would apply when a seller makes delivery in Illinois to a freight forwarder who handles the arrangements for the property to be delivered outside the United States, not to be returned to the United States. 86 Ill. Adm. Code 130.605(g). Section 130.605(f) identifies the type of documents a seller must retain in his or her records to support such an exemption.

Your letter does not contain sufficient information to determine whether the manufacturing exemption would apply to these purchases. However, to determine whether the company's product qualifies for the manufacturing machinery and equipment exemption, review the Department's regulations regarding Manufacturing Machinery and Equipment at 86 Ill. Adm. Code 130.330.

Your letter also makes inquiry regarding the resale exemption. To document that a sale to a purchaser is a sale for resale, a company is obligated by Illinois to obtain a valid Certificate of Resale from a purchaser. See 86 Ill. Adm. Code 130.1405. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. In addition to the statement that the property is being purchased for resale, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing; and
- 5) Registration Number, Resale Number, . . . or a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

86 Ill. Adm. Code 130.1405(b).

If purchasers fail to provide Certificates of Resale, the sales are presumed to not be for resale and sellers would incur Retailers' Occupation Tax and would be required to charge the corresponding Use Tax to the purchasers. See Section 130.1405(d). It is possible to rebut this presumption with other evidence as set out in Section 130.1405(d).

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Any of these exemptions may be used when appropriate, and a seller must document each and obtain necessary supporting documentation as discussed above, and in the Department's applicable regulations. See 86 Ill. Adm. Code 130.605 (d), (f), 130.330, and 130.1405.

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,

Kimberly A. Rossini
Associate Counsel

KAR:dlb