

Where it is impractical, at the time of purchase, for a contractor to determine how the materials purchased will be used (i.e., either incorporated into real estate or sold over the counter), the contractor may provide its supplier with a certification that the contractor is purchasing all materials for resale purposes and will assume responsibility for reporting and paying the proper tax upon the item's disposition. Sales of materials to construction contractors for incorporation into real estate owned by exclusively charitable, religious, or educational institutions or organizations, or for incorporation into real estate owned by governmental bodies, may be purchased using the exempt organization's E-number. See 86 Ill. Adm. Code 130.2075(b). (This is a GIL.)

September 25, 2023

NAME
COMPANY
ADDRESS

Dear NAME:

This letter is in response to your letter dated July 31, 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:

This letter is in follow-up to a previous letter (your response attached) written to the Department regarding a request for a PLR regarding the reporting of our Retailer's Occupation Tax.

We are a INDUSTRY Construction Corporation located in CITY, IL, we primarily provide and install fencing, gates, guard rails etc. to Commercial, Residential and Governmental (Highways, Airports etc.) customers. Almost all our end products become part of the Real Estate they are

affixed to. We currently purchase all materials from Suppliers without Sales tax as we are unable to determine at the time of purchase whether the materials will be used for an exempt (Governmental body) or taxable entity.

We would like your approval to calculate our ROT as follows: We have analyzed our Costs of Merchandise for all jobs for the last (4) four years and have determined the Merchandise Cost of Goods (subject to ROT tax) is 31%. Effective immediately, we would like to use this Percentage applied to applicable monthly Illinois taxable sales to determine our ROT liability. Going forward, as soon as reasonably possible after the year end we will re-determine this percentage based on the most current (4) four years of data and apply this new percentage to applicable Sales.

We feel this is the most accurate way to report and pay the ROT liability to the Department and fully complies with our responsibility under ILL. Admin. Code tit. 86, 130.2075(b).

We thank you in advance for your consideration.

DEPARTMENT'S RESPONSE:

Under 130.2075(b), persons who act as both construction contractors and over-the-counter sellers and who do not know at the time of purchasing supplies the purpose for which the supplies will be used, are authorized to buy all supplies for resale – but then must pay retailers' occupation tax on all items – both those sold at retail and those installed into real estate. For items sold over the counter at retail, retailers' occupation tax, including any applicable local tax, is due on the selling price of the items. For items installed into real estate, retailers' occupation tax, including any applicable local tax, is due on the cost price of the items installed into real estate.

Section 130.2075(d) states that if construction contractors permanently affix tangible personal property into real estate owned by an exclusively charitable, educational, or religious organization or governmental body that has an exemption identification number ("E" number) issued by the Department, the contractors can purchase that tangible personal property tax free. In claiming this exemption, the construction contractors must provide their suppliers with the E number of the organization or governmental body owning the property into which the tangible personal property will be incorporated and must also provide the certification described in Section 130.2075(d)(4).

In addition, Section 130.2075(e) provides that tangible personal property that will be physically incorporated into public improvements, the ownership of which is required to be conveyed to a unit of local government pursuant to a pre-development transfer requirement, is exempt from Retailers' Occupation Tax and Use Tax. To claim the

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exemption, the contractors must provide their suppliers with the exemption number of the governmental unit to which the public improvements will be transferred upon completion. The pre-development transfer agreement may take any of the forms contained in Section 130.2075(e)(1-4).

Many types of property are used in building construction that do not become a part of the real property and are taxable to the contractor working on behalf of exempt entities. For example, concrete forms, tools, fuels, lumber for forms and supplies are types of property used by construction contractors but not incorporated into the tangible personal property. The contractors owe Use Tax when purchasing these and other end use or consumption items even though the contractors are acting under construction contracts with exempt entities. See Section 130.2075(d)(3).

Notably, however, 130.2075(d) does not authorize tax-free purchases in the same manner that 130.2075(b) does when it is unknown whether the supplies will be for resale over the counter or installation as part of a construction contract. As such, unless the purchase of supplies meets the conditions of 130.2075(b), a construction contract may not purchase all supplies tax free just because it is unknown whether the materials will be installed for an exempt client. Instead, the contractor may purchase supplies that will be installed for an exempt client tax free using the client's E-number, but must pay use tax to its supplier or directly to the Department, if the supplier is not registered to collect use tax, for items that will be installed for non-exempt clients. In cases where a construction contractor is required to pay retailers' occupation tax, including local taxes, on the cost price of materials installed into real estate under 130.2075(b), the Department is not authorized to approve any specific method of calculating costs on which the retailers' occupation tax is imposed on materials transferred under a construction contract other than an actual accounting of costs of materials for each contract.

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 Rossini
Associate Counsel

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