

When a company ships tangible personal property that is purchased outside the state to Illinois customers for their use, the company owes Use Tax on the company's cost price of the tangible personal property. However, if tax was properly due and paid in another state on the tangible personal property shipped into Illinois, then the company may credit the amount of that tax paid on its return in determining its Illinois Use Tax liability. See 86 Ill. Adm. Code 150.310(a)(3). (This is a GIL.)

October 10, 2023

NAME
COMPANY
ADDRESS

Dear NAME

This letter is in response to your letter dated September 19, 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 am writing to get official confirmation that the service COMPANY provides to individuals who reside in Illinois is not subject to sales tax. We are a CLIA certified lab based in STATE that analyzes semen for male fertility. Our test is classified as a Lab Developed Test (LDT). The FDA requirements for a diagnostic test to be classed as LDT, and therefore subject to regulatory discretion, include single laboratory development and use, authorized physician instruction, and CLIA certification and accreditation.

Although our lab is located in STATE, we provide testing to individuals across the USA through mail-in sample collection. The individual pays COMPANY for the test and is then sent the sample collection kit to his home. The male's semen sample is produced & collected at home

using the collection kit developed by COMPANY which includes a collection cup with a unique barcode and preservation solution. The preservation solution is added to the sample after it is produced and the sample is sent back to our STATE lab in the same packaging with a prepaid label via overnight courier service for testing.

We have been charging sales tax on the test based on our CPA's initial research as though this was a retail sale of a diagnostic test kit. However, upon further research and discussion with our legal advisor and insurance broker, both of whom specialize in healthcare, they do not feel we should be charging sales tax since it is a medical laboratory test (a service) vs a retail sale of a tangible good. Since we have previously been charging tax to Illinois individuals, it was advised that we reach out to the state to describe our business and get confirmation that our lab services as described above are not subject to sales tax.

While the sample is collected at home, it is NOT an "at-home diagnostic test kit" such as a pregnancy test, COVID test, etc. The sample collection kit is of no value since it is merely a means to collect and transport the sample to our lab and is not considered tangible personal property. No results are derived from the kit at home and the analysis must be done in our STATE lab by trained Clinical Lab personnel. Therefore, COMPANY is providing clinical lab services, NOT a retail diagnostic test kit.

Based on the above description of our business, can you please confirm that the services we provide are not taxable? Upon confirmation that COMPANY should not be charging sales tax, we will stop collecting, file a final return, remit taxes collected and close our account.

Please respond with the determination either via email to E-MAIL or via US mail to the corporate office. You may reach out to me via email or phone at PHONE with any questions.

DEPARTMENT'S RESPONSE:

Retailers' Occupation Tax and Use Tax

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.

Service Occupation Tax

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 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 or Use Tax liability for servicemen, depending upon which tax base they choose to calculate their liability.

If a transaction does not involve the transfer of any tangible personal property to the customer, then the transaction with the customer generally would not be subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax.

As noted above, the Use Tax is a privilege tax imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer, as "retailer" is defined in the Use Tax Act. 86 Ill. Adm. Code 150.101. When a company ships tangible personal property, in this case test kits, that are purchased outside the state to Illinois customers for their use, the company owes Use Tax on the company's cost price of the tangible personal property. However, if tax was properly due and paid in another state on the tangible personal property shipped into Illinois, then the company may credit the amount of that tax paid on its return in determining its Illinois Use Tax liability. See 86 Ill. Adm. Code 150.310(a)(3).

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,

Richard S. Wolters
Associate Counsel

RSW