

This letter discusses digital photography. See 86 Ill. Adm. Code 130.2000 and 86 Ill. Adm. Code 140.101. (This is a GIL.)

April 5, 2024

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated December 5, 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 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:

To Whom it May Concern,

I hope this letter finds you well. I am writing to request a General Information Letter regarding the sales tax obligations for my business, COMPANY, which provides photography services to clients. We are located in CITY, IL.

My pricing structure consists of two main components: the session fee and package fees. The session fee covers the cost of services rendered and does not include any tangible products. The package fees, on the other hand, include digital files of my clients’ images. Additionally, within these packages, clients have the option to include a custom-made album. However, it is important to note that the package fees remain constant regardless of whether the album is included or not, as the primary product offered is the digital files.

Given this pricing structure, I am seeking clarification on whether my business is required to continue collecting and remitting sales tax. Specifically, I would like to know how the sale of digital files and optional

albums within my photography packages aligns with the current sales tax regulations in Illinois.

Your guidance on this matter would be greatly appreciated as it will ensure that my business remains compliant with all applicable tax laws. If there are any additional details or documentation needed to assist in providing a response to my inquiry, please do not hesitate to contact me.

Thank you for your attention to this matter, and I look forward to your prompt response.

DEPARTMENT'S RESPONSE:

Retailers' Occupation Tax and Use Tax

The 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.

Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon the serviceman's activities. For your general information, see 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Information or data that is electronically transferred or downloaded is not considered the transfer of tangible personal property in this State. See 86 Ill. Adm. Code 130.2105(a)(3). Accordingly, the electronic transfer of digital photographs or retouched photographs that does not include canned software as part of the transfer generally would not be subject to tax.

Section 2-15 of the Retailers' Occupation Tax Act contains specific rules for photoprocessing and photographers. Generally, photographers are subject to Retailers' Occupation Tax on the photoprocessing component of their total service charge when they sell products of photoprocessing. See 86 Ill. Adm. Code 130.2000. In transactions in which products of photoprocessing are sold in conjunction with other services, if a charge for the photoprocessing component is not separately stated, tax is imposed on 50% of the entire selling price, unless the sale is made by a professional photographer, in which case tax is imposed on 10% of the entire selling price. For purposes of the tax, "photoprocessing" includes, but is not limited to, developing films, positives and

negatives, transparencies, tinting, coloring, and making and enlarging prints. See 86 Ill. Adm. Code 130.2000(b)(3).

The sale of digital photography is not a sale of products of photoprocessing. As a result, the foregoing rules regarding photoprocessing do not apply in the situation of a professional photographer taking digital photographs. Please refer to the below discussion of the Service Occupation Tax for the tax treatment of this type of service.

Service Occupation Tax

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.

Servicemen may calculate their tax base in one of four ways: (1) separately-stated selling price of tangible personal property transferred incident to service; (2) 50% of the serviceman's entire bill; (3) Service Occupation Tax on the serviceman's cost price if the serviceman is a registered de minimis serviceman; or (4) Use Tax on the serviceman's cost price if the serviceman is de minimis and is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of sales of service. They are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the

cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit tax to the Department by filing returns and do not pay tax to their suppliers. They provide suppliers with Certificates of Resale for the tangible personal property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess, and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

For example, if a custom photograph album ("album") is sold as a separate item, and the serviceman calculates the tax using the first method, the tax is based on the separately stated selling price of the album. If the serviceman calculates the tax using the second method, the tax is based on 50% of the total selling price of the entire bill. If the serviceman is eligible and chooses to calculate the tax using the third method, the tax is based upon the cost price of the of tangible personal property transferred incident to the sales of service. Finally, if the serviceman is eligible and chooses to calculate the tax using the fourth method, the serviceman may pay Use Tax based on the album's cost price of the tangible personal property to the serviceman's supplier or may self-assess and remit Use Tax to the Department when making purchases of tangible personal property from unregistered out-of-State suppliers. Servicemen who are eligible to pay Use Tax rather than Service Occupation Tax under the fourth method of calculating tax are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability.

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

NAME
Page 5
April 5, 2024

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