

This letter is a response to a survey regarding drop shipments. For information regarding drop shipments, see the Department's regulation entitled "Drop Shipments," found at 86 Ill. Adm. Code 130.225. (This is a GIL).

March 28, 2006

Dear Xxxxx:

This letter is in response to your letter dated January 6, 2006, in which you request 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.ILTAX.com 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:

Your office was contacted in 1990, 1992, 1994, 1996, 1998, 2000, 2002 and 2004 to assist the Institute in its publication of the *PUBLICATION*. Forty-five states and the District of Columbia were each asked to respond to the 10 survey questions relating to third-party drop shipment transactions. All jurisdictions responded, and the results were compiled and published in 1990, 1992, 1994, 1996, 1998, 2000, 2002 and 2004. Your office was sent a copy of each of the publications. An additional 2004 copy is enclosed for your reference.

We have had continuing favorable reaction to this publication, so much so that the Institute is going to completely reprint the survey for 2006 which will be the Eighth Edition. Over 900 copies of the 2004 survey were ordered by the majority of the Fortune 1000 corporations and the reaction to this monographic study has been overwhelmingly favorable with many requests for a complete update that would reflect statute and administrative changes in the various states since the Seventh Edition was released in July 2004.

Therefore, we are contacting all of the 46 taxing jurisdictions that responded in 2004 to the questionnaire that appears on pages ii-iii of the *PUBLICATION* and are asking each of them to review their responses related thereto and to respond anew to each of the 10 questions.

We would be most appreciative if you would take the time to respond to the ten questions and furnish any updated respondent address information that is appropriate (**please include an e-mail address, if you wish**). When all of the states and the District of Columbia have replied, the information will be republished in a new booklet and you will be sent, of course, a copy. Please direct your replies to my attention at the following address where the compilation will take place:

ADDRESS

A reply by you no later than March 24, 2006, would be most gracious on your part given the time schedule that we have allowed for information gathering and printing of this new 2006 survey. If you have any questions, do give me a call.

Your questions are as follows:

1. Given that Buyer Corporation is not registered in, and has no nexus with, your state (State B), will your state recognize the sale from Seller Corporation to Buyer Corporation as a sale for resale not subject to sales or use tax in your state? ('Yes' or 'No') If the answer is yes, what documentation will your state accept to evidence that the sale from Seller Corporation to Buyer Corporation is a sale for resale?
2. Does it matter if Seller Corporation delivers in its own equipment, rather than by common carrier?
3. Do the FOB terms of sale matter in the taxation of this type of transaction? If so, please explain.
4. Does it matter if Seller Corporation ships from an inventory pool in your state as opposed to an inventory pool in another state?
5. What if Seller Corporation has a Direct Pay Certificate from Buyer Corporation instead of a resale certificate from State A?
6. If Other Corporation is a consumer, would the execution of an affidavit (see Exhibit A) from Other Corporation to Buyer Corporation, furnished to Seller Corporation, be sufficient to relieve Seller Corporation from further responsibility or liability for your state's tax?
7. Does it matter if Other Corporation is reselling as opposed to consuming? Does it matter that other Corporation is an exempt or immune entity or purchasing for an exempt purpose other than for resale?
8. What if Other Corporation is installing the items shipped in the performance of a construction contract with an exempt agency in your state?
9. If Seller Corporation is required to remit or collect and remit the tax, is the tax measured by the price paid by Buyer Corporation, or by the price paid by Other Corporation? If measured by the price paid by Other Corporation, what is Seller Corporation required to do if it does not know, and has no right to know, the price paid by the Other Corporation?

10. What is the code section the state relies on to reach its conclusion in each answer?

DEPARTMENT'S RESPONSE

The Department cannot approve publications other than those issued by the Department of Revenue. However, the information previously provided by the Department of Revenue and published in the Seventh Edition of your publication generally remains correct. For further information, we would like to direct readers' attention to the Department's regulation entitled "Drop Shipments," found at 86 Ill. Adm. Code 130.225, which explains in greater detail the Department's position on the acceptance of Certificates of Resale by sellers from out-of-State purchasers.

In reviewing the Seventh Edition, we also noted one answer that needs to be updated. The answer to question number five is no longer correct. The State of Illinois implemented a Direct Pay program effective July 1, 2001. (See the Department's regulation entitled "Direct Payment Program" at 86 Ill. Adm. Code 130.2500.) The use of a direct pay permit would not be appropriate under the facts presented.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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