

When landscape contractors purchase items of tangible personal property that will not be permanently affixed to real estate, the supplier incurs Retailers' Occupation Tax and the contractors must pay Use Tax to their suppliers. See 86 Ill. Adm. Code 130.1940. (This is a GIL.)

September 14, 2016

Dear Xxxxx:

This letter is in response to your letter dated March 23, 2016, 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:

The ORGANIZATION is requesting an opinion letter from the Illinois Department of Revenue regarding sales tax assessed on the sale of materials to construction contractors acting exclusively for charitable, religious or educational organizations or institutions, or for governmental bodies. This request is a follow-up from our conference call on March 16, 2016 where we discussed this issue.

There is some confusion in the landscape industry as to what materials used on public works construction projects are subject to sales tax. This confusion has exposed both contractors and suppliers to risk, audits, and penalties, as they attempt to determine if and when sales tax applies to the materials being installed and sold. The question we have is how are materials handled that are not converted into real estate, but are not used again after the project has been completed. The specific materials we are questioning are listed and outlined below.

- Perimeter Erosion Barrier (Silt Fencing) - sediment control device used on construction sites to protect water quality in nearby waterways, from sediment (loose soil) in storm water runoff. These are installed during construction, removed after construction, but are not reused.

- Temporary Ditch Checks (Wood Excelsior Logs 12"x10') - Ditch checks are small dams constructed across a swale or drainage ditch in order to reduce the velocity of water flowing in a channel. They are removed after the construction has been completed and are not reused.
- Wooden stakes – a strong wooden post with a point at one end, driven into the ground to support a tree or fence. These are removed after a period of 2-3 years after the construction is complete and not reused.
- Marking Paint – paint used to mark lines and boundaries. The paint stays onsite but will eventually wash away as the paint is not intended to be permanent.
- Guying wire – a tension cable used to provide support to a newly planted tree. These will remain onsite for a period of 2-3 years and then are cut and removed when the tree is large enough. This could be after multiple seasons. The wire is not reused.
- Temporary Mulch (Hydro Mulch) – Hydraulically sprayed erosion control method that stabilize disturbed soil areas and protect soils from erosion by wind or water. This material is disked into the soil at a point when the contractor wants to do their final grading.

We seek the Department's opinion on these types of materials so that contractors can reflect the sales tax on their bids and that suppliers can universally apply the sales tax to avoid wide discrepancies in price. ORGANIZATION has the ability to distribute this opinion using our communication channels so that the IDR's position can be better understood and applied in the field.

Your prompt attention is requested as another season of landscape construction and bidding is upon us. A letter may be scanned and emailed to PERSON@ORGANIZATION.NET. I may also be reached at ###. The mailing address for ORGANIZATION is on the masthead.

DEPARTMENT'S RESPONSE:

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 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 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 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.

A contract that provides for both the sale and installation of tangible personal property that is permanently affixed or incorporated into a structure is considered a construction contract. See 86 Ill. Adm. Code 130.1940 and 130.2075. The term "construction contractor" includes a landscape contractor and the meaning of "construct" includes to install or plant. See Section 130.1940(a)(1) and (3). Landscape contractors incur Use Tax on their cost price of the tangible personal property they purchase to be permanently affixed to real estate. Landscape contractors, however, can purchase tangible personal property tax-free when that tangible personal property will be incorporated into real estate owned by an entity which has been issued an Illinois sales tax exemption identification

number. See 130.2075(d). The purchasing landscaping contractor must give suppliers the certification described at 130.2075(d)(4).

However, when landscape contractors purchase items of tangible personal property that will not be permanently affixed to real estate, the suppliers incur Retailers' Occupation Tax and the contractors must pay Use Tax to their suppliers. Items such as silt fencing, ditch checks, wooden stakes, marking paint, guying wire and hydro mulch are generally not considered to be permanently affixed to real estate. If used in furtherance of a contract with an exempt entity, the landscape contractor generally incurs Use Tax on these items.

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,

Debra M. Boggess
Associate Counsel

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