

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

December 8, 1998

Dear Ms. Xxxxx:

This letter is in response to your letter dated September 30, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We have been retained by our client to request a written opinion regarding the sales and use tax application to several new products and services offered relative to designing and maintaining records management systems. The taxpayer manufactures many of the components used in performing these services. The sales and use tax laws are unclear regarding the taxability of these new products and services. Therefore, we are requesting that you review the enclosed survey facts describing these products and services, and respond to the attached questions concerning the sales and use tax implications of the product and/or service. In addition we ask that you include a citation to the authority on which the opinion is based.

Your prompt response is greatly appreciated and will aid in the proper voluntary compliance with your state's sales/use tax laws.

Your written response may be sent to:

NAME/ADDRESS

Thank you for your assistance in this matter. If you have any questions or require additional information, please feel free to call me at ####.

Your Sales/Use Tax Survey reads as follows:

A. **Product/Service Offered:** Conversion Services

Description of Product/Services:

When performing conversion services, the taxpayer transfers documents from one media to another. For example, the taxpayer may take job tab vertical files and create side tab color coded files, transfer paper

documents to optical image formats, and/or sort, validate, and file documents into a new system. All materials (i.e. files, tabs, labels) are either manufactured by taxpayer or purchased from suppliers.

The taxpayer must first receive from the client an accurate electronic database of the files present in the system. If the client cannot provide this information electronically, the taxpayer may develop it for them.

The taxpayer must then test the data to ensure its accuracy. The taxpayer inventories the files and documents contained in each file to determine the necessary system requirements. Then a file and document purge are performed to eliminate inactive files and documents. Finally, the taxpayer may reorganize the documents within the files.

Sales/Use Tax Questions	Response	Citation/Authority
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| 1. Are gross receipts from conversion services subject to sales tax? | | |
| 2. If taxable, does 'gross receipts' include: (separately stated) | | |
| a) Labor | | |
| b) Installation (if the taxpayer manufactured the products used) | | |
| c) Installation (if products from an outside vendor are used) | | |
| d) Materials | | |
| 3. Are manufactured or purchased materials used in performance of conversion services taxable? If so, what is the taxable basis? | | |

B. **Product/Service Offered:** Imaging Services

Description of Product/Services:

When performing imaging services, the taxpayer uses a scanning device to scan the clients' documents and index these documents for easy retrieval.

Sales/Use Tax Questions	Response	Citation/Authority
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| 1. Are gross receipts from imaging services subject to sales tax? | | |
| 2. If taxable, does 'gross | | |

receipts' include: (separately stated)

- a) Labor
 - b) Materials
3. Are materials purchased and used in performance of imaging services taxable? If so, what is the taxable basis?

C. **Product/Service Offered:** Move Services

Description of Product/Services:

When performing move services, the taxpayer assists a client in moving its file system. This may include disassembling the file equipment and reassembling it at the new location, redesigning the system layout to fit the new location and/or adding shelving to expand the current system. In addition the taxpayer packs the files to transport them to the new location and then re-files them into the new system at the new site.

Sales/Use Tax Questions	Response	Citation/Authority
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| 1. Are gross receipts from move services subject to sales tax? | | |
| 2. If taxable, does 'gross receipts' include: (separately stated) | | |
| a) Labor | | |
| b) Materials | | |
| c) Re-installation of the existing shelving | | |
| d) Installation of new shelving manufactured by the taxpayer | | |
| e) Installation of new shelving taxpayer purchased from outside vendors | | |
| 3. Are materials purchased and used in performance of move services taxable? If so, what is the taxable basis? | | |

D. **Product/Service Offered:** Project Management Services

Description of Product/Services:

When performing project management services the taxpayer provides services to manage a project from start to completion. These services can be as simple as supervising the delivery of cabinets to managing much larger projects including coordination of vendors other than the taxpayer.

Sales/Use Tax Questions Response Citation/Authority

1. Are gross receipts from project management services subject to sales tax?
2. If taxable, does 'gross receipts' include: (separately stated)
 - a) Labor
 - b) Materials
3. Are materials purchased and used in performance of project management services taxable? If so, what is the taxable basis?

E. **Product/Service Offered:** Consulting Services

Description of Product/Services: Consulting services include a variety of services.

Needs Assessment: Taxpayer inventories the documents and interview the document users to generate recommendations and identify areas for improvement.

Workflow Analysis and Process Re-engineering: Taxpayer analyzes the flow of the process and how each task in each process is done. The taxpayer then recommends techniques to make the processes simpler and more efficient.

Classification and Indexing: Taxpayer assists clients in designing and applying a document classification system.

Retention Scheduling: Taxpayer provides clients with a properly researched set of standards for maintaining, archiving and destroying documents.

Technology Specification and Product Evaluation: Taxpayer provides an unbiased opinion regarding the hardware and software requirements of the client as well as a set of standards for selecting the best vendor of these products.

Policy and Procedures Development: Taxpayer works with the client to

develop a manual containing the policies and procedures for the client's employees to use.

Project Implementation Management: Taxpayer helps to ensure that the projects are brought in on time, under budget and in accordance with expectations.

Sales/Use Tax Questions	Response	Citation/Authority
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| 1. Are gross receipts from consulting services subject to sales tax? | | |
| 2. If taxable, does 'gross receipts' include:
(separately stated) | | |
| a) Labor | | |
| b) Materials | | |
| 3. Are materials purchased and used in performance of consulting services taxable?
If so, what is the taxable basis? | | |

F. **Product/Service Offered:** Installation Services

Description of Product/Services:

The taxpayer may sell and install file folders, shelving units or cabinets for clients. Sometimes these products are manufactured by the client. Other times the products are purchased from a separate vendor.

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| 1. Are gross receipts from installation services subject to sales tax where the taxpayer installs goods that it manufactured? | | |
| a. If taxable, does 'gross receipts' include:
(separately stated) | | |
| (1) Labor | | |
| (2) Materials | | |
| 2. Are gross receipts from installation services subject to sales tax where the taxpayer installs goods from another vendor? | | |

- a. If taxable does 'gross receipts' include:
 - (1) Labor
 - (2) Materials
3. Are materials purchased and used in performance of installation services taxable?
If so, what is the taxable basis?

The Department is unable to answer your letter in the format you requested. The following is general information covering the topics you raised.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under 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 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 the sales of service.

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) enclosed. 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. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They

provide suppliers with Certificates of Resale for the 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 the Retailers' Occupation Tax Act. 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). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term construction contractors includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term contractor means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

As previously stated, contractors are deemed end users of property that is purchased for incorporation into real property. If general contractors did not purchase the tangible personal property, then the general contractors cannot be held liable for tax due on another entities' purchases. If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

Construction contractors incur Retailers' Occupation Tax liability when they engage in selling any kind of tangible personal property to purchasers without permanently affixing the tangible personal property to real estate. See 86 Ill. Adm. Code 130.1940(b)(1). Construction contractors can purchase such tangible personal property tax-free for resale by providing their suppliers with Certificates of Resale. See 86 Ill. Adm. Code 130.1405, enclosed. Their Illinois suppliers and suppliers who are "retailers maintaining a place of business in Illinois," must retain certificates of resale in order to document the resale exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further

questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.