

TO: mmello@paint.org
FROM: REV.GCO@Illinois.gov
DATE: September 20, 2024

This email response is in reply to your email dated August 28, 2024, in which you requested information. An email response is intended to direct the inquirer to the Department's statutes and administrative rules pertaining to the inquiry. Email responses from the Department are not binding upon the Department and do not create any rights under the Taxpayer Bill of Rights. Email responses to Internet questions are not private letter rulings or general information letters as those terms are defined in 2 Ill. Adm. Code 1200. Although, the Department is unable to provide a definite response to a specific question in the context of an email response, this email response will provide you with basic guidelines that may be used to determine the answers to your questions.

In your e-mail you stated and made inquiry as follows:

I am an attorney with the American Coatings Association and their affiliated non-profit organization, PaintCare. As you may be aware, P.A 103-372 was signed into law and establishes an Illinois Paint Stewardship program. See <https://ilga.gov/legislation/publicacts/103/PDF/103-0372.pdf> for details. The program is funded by an assessment on each can of paint sold (at the point of sale) in Illinois. PaintCare is requesting confirmation that the paint stewardship assessment fee is part of the purchase price and thus subject to retail sales tax. PaintCare has Paint Stewardship Programs in other states and has requested similar determinations from the applicable state agency's regarding assessment fees being subject to sales tax.

Additionally, as a 501 (c)(3), PaintCare would appreciate your help in obtaining a tax exempt determination letter or putting us in contact with the individuals who can assist with obtaining such a letter.

DEPARTMENT'S RESPONSE:

Section 15(g) of the Paint Stewardship Act states that, "[e]ach manufacturer under the plan shall include in the price of any architectural paint sold to retailers or distributors in the State the per container amount of the fee set forth in the plan or fee adjustment. . . . A retailer or distributor shall not deduct the amount of the fee from the purchase price of any paint it sells."
415 ILCS 175/15(g).

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. 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. The tax is measured by the seller's gross receipts from such sales made in the course of such business. 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. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as “sales” tax in Illinois.

“Gross receipts” from the sales of tangible personal property at retail means the total selling price or the amount of such sales. 35 ILCS 120/1. “Selling price” or the “amount of sale” means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services. “Selling price” shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include charges that are added to prices by sellers on account of the seller’s tax liability under this Act, or on account of the seller’s duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act. 35 ILCS 120/1.

Hopefully, this information is helpful. You may access the Department’s website at <https://tax.illinois.gov> to review regulations, letter rulings and other types of information relevant to your inquiry. If you would like to request a General Information Letter or Private Letter Ruling, follow the procedures outlined in [2 Ill. Adm. Code 1200](#).