

We are an Illinois-based company, with several salespeople working from home in various states. The Michigan-based sales manager purchased 2014 calendars for distribution to our customers around the country. No sales tax was charged by the Michigan printer. My question is: do we owe Illinois Use Tax on this purchase? And if so, I'm presuming it would only be for the percentage of calendars that were actually delivered into Illinois. But when I put on my 'state revenue department audit hat', I want 100% of the purchase to be taxable as I'm an Illinois company and the calendars were to promote my company to my customers. I'm on the horns of a dilemma...at the fork in the road...astride the fence...angel on one shoulder; devil on the other...

1. I think they owe IL Use tax on at least the calendars used in IL and the 4 or 5 neighboring states with which IL has an agreement (I think MI is one). Paying partial tax on the materials, or tax on all the materials used (assuming they are broken out on the invoice) would surely be the safe thing and cheaper than an audit and fine.
2. It is for promotional purposes and therefore for their own use, they should self-access tax on their return.

MEMORANDUM

TO: Sharon Flick
FROM: Andrew Klemens
SUBJECT: GLGA Member question
DATE: 3/26/2014

Background:

An Illinois-based company maintains a sales manager located in Michigan. The Michigan sales manager purchased 2014 calendars for distribution around the country. No Michigan sales tax was charged.

Issues:

1. Is the Michigan vendor required to collect sales tax on the transaction?
2. If sales tax is not collected, is the buyer obligated to pay use tax in any state where the calendars are used?

Analysis:

Is the Michigan vendor required to collect sales tax?

The sale of the calendars in Michigan will be treated as a sale at retail of tangible personal property. If these items are delivered in Michigan, the vendor must collect Michigan tax on the entire selling price of the calendars. In the event delivery is in Michigan and the vendor did not collect tax, the buyer would need to self-assess use tax.

If instead the calendars are shipped via common carrier into Illinois, the vendor would not be required to collect Michigan tax from the buyer.

If sales tax is not collected, does the buyer owe any use tax?

If the sale was not subject to sales tax in Michigan, a use tax may be due on the consumption, ownership or possession of the calendars in another state.

If the calendars are received in Illinois from an out-of-state producer and stored in Illinois for a temporary period before being distributed, use tax will be assessed based on the location where the calendars are used. Per Illinois Reg. 150.310(a)(4) the portion of the calendars which are redistributed out-of-state are not subject to Illinois use tax. If the buyer has nexus in the other states where the "user" of the calendar is located, use tax would also be owed in those states, including Michigan.

The calendars distributed to Illinois destinations would be subject to Illinois use tax. Because calendars are treated as a retail sale, the tax that would be owed would be the use tax and not the Service Occupation Tax.

For more information, please contact Andrew Klemens at 630-545-4506.