

Buried telephone lines are considered to remain tangible personal property and a contractor installing such lines could not claim to be a real estate construction contractor with respect to the installation of such lines.

February 23, 1989

Attention:

Dear

This is to acknowledge your letter of December 27, 1988, that was received in this office on January 13, 1989. In that letter you stated and inquired:

I represent an individual in this community who has acquired a "ditch witch" machine and plans to do trenching and ditching for the laying of waterlines and other utility services.

Please provide information as to whether this proposed service is subject to the provisions of the Service Occupation Tax, and if so, please send necessary forms and instructions for the collection and reporting of this tax.

Based upon the limited information contained in your letter, we cannot determine the full extent of the business activities of your client. If the business activities of the client is limited to the trenching/ditching function, then this would be a sale of service subject to Service Occupation Tax liability on any tangible personal property that may be transferred as an incident of the service. The client would incur Illinois Use and local Retailers' Occupation Tax reimbursement liabilities upon his purchase of the "ditch witch" machine.

Please note that some items laid in the ditches may or may not be considered permanent real estate after installation. This Department has ruled that buried telephone lines remain tangible personal property after installation. That is, if the client were to install and sell telephone lines, this transaction would be subject to Retailers' Occupation Tax liability. Also, labor charges for the installation of the buried telephone lines would also be subject to Retailers' Occupation Tax unless a separate agreement existed for such installation charge according to 86 Ill. Adm. Code 130.450, enclosed.

However, manholes, accesses, conduits and certain other underground structures would be considered to be real estate and the tax base for these items would be the contractor's cost price of materials.

For the possible use of the client, we have enclosed an Application for Registration with Instructions (NUC-1). However, if the client will not be selling any items of tangible personal property subject to Retailers' Occupation Tax, the client could discharge its tax responsibility if it pays the tax to suppliers that are registered to collect Illinois tax.

Very truly yours,

Karl W. Betz

Staff Attorney