

This letter describes the manner in which prepaid sales tax on motor fuel is collected and remitted. See 86 Ill. Adm. Code 130.551. (This is a GIL.)

September 10, 2008

Dear Xxxxx:

This letter is in response to your letter dated May 22, 2007, in which you request a Private Letter Ruling. 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 1200.1120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

Whether to issue a Private Letter Ruling in response to a request for such a ruling is within the discretion of the Department. See subpart (a)(4) of 2 Ill. Adm. Code 1200.110. The Private Letter Ruling Committee has decided that it will not issue a Private Letter Ruling in regards to your request. As a result, we are responding with a General Information Letter. In your letter you have stated and made inquiry as follows:

Per our previous conversations, below is a request for PLR.

### **General Information**

1. This Private Letter ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailer's [sic] Occupation Tax consequences of the actual business practices of the Company.
2. The Company is not currently engaged in litigation with the Department with regard to this tax matter.
3. The Company is not currently under audit by the Department with regard to this tax matter.
4. The tax period at issue is all open periods under Illinois statute of limitations.
5. To the best knowledge of the Company's personnel, the Department has not previously ruled regarding this matter for the Company. In addition, the Company has not submitted the same or similar issue to the Department.
6. The Company requests that all identifying information be deleted from the PLR prior to dissemination to others.
7. The Company knows of no authority contrary to the authorities referred to and cited below.

ABC hereby requests a ruling on several scenarios related to the collection and remittance of Prepaid Sales Tax. Each separate scenario is outlined below.

**Scenario 1** – Supplier is a seller of gasoline. Supplier makes sales to Reseller, who in turn sells this gasoline to Consumer. In this particular case, Consumer is located in the Illinois County Enterprise Zone, and has been certified under Certificate #. The Enterprise Zone certification states that Consumer is exempt from state taxes on purchases of tangible personal property [sic]will use or consume in the Enterprise Zone in ‘the process of manufacturing or assembling tangible personal property for sale or lease, including direct on-line manufacturing machinery and equipment; repair and replacement parts for such machinery and equipment; tools, material, and supplies used to maintain, repair or operate such machinery and equipment, and manufacturing fuels...’

Fuel purchased by Consumer is used or consumed during the assembly/manufacturing process of motor vehicles. Additionally, some fuel remains in the fuel tank when the vehicle is shipped to vehicle dealerships throughout the country.

The sales contract is such that Supplier sells to Reseller, and in turn, Reseller sells to Consumer. However, physically, the product is dropped shipped directly from Supplier's storage to Consumer's facility.

Regarding the requirement to charge prepaid sales tax on these sales, 35 ILCS 120/2d states, in part:

**[35 ILCS 120/2d] Tax prepayment by motor fuel retailer. 2d** Any person engaged in the business of selling motor fuel at retail, as defined in the Motor Fuel Tax Law, and who is not a licensed distributor or supplier, as defined in the Motor Fuel Tax Law, shall prepay to his or her distributor, supplier, or other reseller of motor fuel a portion of the tax imposed by this Act if the distributor, supplier, or other reseller of motor fuel is registered under Section 2a or Section 2c of this Act. The prepayment requirement provided for in this Section does not apply to liquid propane gas.

Reseller is a non-Illinois company, and is not registered for the retail sales tax, or as a reseller in IL. They also are not registered for the IL Motor Fuel Tax.

**Requested Ruling** – In Scenario 1, is the Supplier required to charge the Reseller IL Prepaid Sales Tax to the Reseller? Please specify the statutory construction of this answer, and if the answer is ‘no’, please advise how Supplier should document these sales as exempt from PPST, i.e. what information should Supplier obtain from Reseller and/or Consumer .

**Scenario 2** – Same as Scenario 1, except the transaction only involves Supplier and Consumer. Supplier will sell directly to Consumer. Again, Consumer's location and use are exactly the same as Scenario 1, i.e., fuel will be predominately consumed in the manufacturing process, with some fuel remaining in fuel supply tanks of vehicles shipped to vehicle dealerships throughout the country.

**Requested Ruling** – In Scenario 2, is the supplier required to charge the IL Prepaid Sales Tax to the Consumer? Please specify the statutory construction of this answer.

**Scenario 3** – Supplier is a seller of gasoline. Supplier is selling to a reseller who is not licensed as a Motor Fuel Distributor in Illinois. Unlike the first two scenarios, this is a different reseller who is selling to retailers, but themselves are not a retailer. In this case, you have a split between the two requirements in 35 ILCS 120/2d; the reseller is not selling *at retail*, but also is not a licensed distributor or supplier under the motor fuel statutes.

**Requested Ruling** – 35 ILC 120/2d specifically uses ‘and’ between the two requirements (selling at retail and not licensed as a supplier/distributor under the motor fuel law). Do both have to be satisfied in order for the tax to be charged? In the specific scenario 3 above, is the Supplier required to charge the IL Prepaid Sales Tax? Please specify the statutory construction of this answer.

Thank you very much for your time and attention to this matter.

### **DEPARTMENT’S RESPONSE:**

Your letter posits questions regarding the prepayment of sales tax on motor fuel. We are unable to issue specific guidance in the context of this letter due to the extremely limited information regarding the numerous parties to these transactions, as well as the lack of any specific information regarding the different transactions between each of these parties or how those transactions are documented. This information is critical in order for us to apply the statutory requirements governing prepaid sales tax on motor fuel. As a result, we can provide only general information.

Provisions regarding prepayment of sales tax on motor fuel are contained in Section 2d of the Retailers’ Occupation Tax Act, which provides, in part, that

“[a]ny person engaged in the business of selling motor fuel at retail, as defined in the Motor Fuel Tax Law, and who is not a licensed distributor or supplier, as defined in the Motor Fuel Tax Law, shall prepay to his or her distributor, supplier, or other reseller of motor fuel a portion of the tax imposed under this Act if the distributor, supplier, or other reseller of motor fuel is registered under Section 2a or Section 2c of this Act.”

The Department’s regulations at 86 Ill. Adm. Code 130.551 explain these provisions in greater detail. As noted in the Department’s rules, licensed distributors are required to collect the prepaid sales tax on motor fuel they deliver to persons who are engaged in the business of selling motor fuel at retail and who are not licensed as distributors or suppliers under the Motor Fuel Tax Law. The limited information contained in your letter describing scenarios 1 and 3 does not establish a basis upon which to exempt your client from collection of prepaid sales tax. As a result, in cases such as those you have described, we believe collection of the prepaid sales tax is proper.

When motor fuel is sold to purchasers for use or consumption and not for resale, a retail sale occurs. Sellers incur Retailers’ Occupation Tax liability on such sales, absent a properly documented exemption. For information regarding the applicability of and documentation for exemptions provided in enterprise zones to manufacturers that are certified by the Department of Commerce and Economic Opportunity (formerly the Department of Commerce and Community Affairs), please see 86 Ill. Adm. Code 130.1951(g).

If you have further questions related to the Illinois sales tax laws, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton  
Chairman, Private Letter Ruling Committee

TC/JTG:msk