

This letter concerns County Motor Fuel Taxes imposed on biodiesel. See 55 ILCS 5/5-1035.1. (This is a GIL.)

December 17, 2008

Dear Xxxxx:

This letter is in response to your letter dated February 19, 2008, in which you request information. 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 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Recently we began selling B11 (a diesel fuel blend containing 11% B100 biodiesel and 89% petroleum diesel) at our retail station in COUNTY. We have a question regarding County Motor Fuel Tax as it applies to Biodiesel blends. We posed the question online at your "Taxpayer Answer Center" and were referred to you for the answer.

The Retailers' Occupation Tax Act states:

'with respect to 100% biodiesel, as defined in the Use Tax Act, and biodiesel blends, as defined in the Use Tax Act, with more than 10% but no more than 99% biodiesel, the tax imposed by this Act does not apply to the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2013'

The Illinois statute regarding County Motor Fuel Tax states:

'A tax imposed pursuant to this Section, and all civil penalties that may be assessed as an incident thereof, shall be administered, collected and enforced by the Illinois Department of Revenue in the same manner as the tax imposed under the Retailers' Occupation Tax Act, as now or hereafter amended, insofar as may be practicable; except that in the event of a conflict with the provisions of this Section, this Section shall control.'

Please explain how County Motor Fuel Tax relates to blends of biodiesel. Does the Dupage [sic] County Motor Fuel Tax apply to retail sales of biodiesel blends containing more than 10% B100?

DEPARTMENT'S RESPONSE:

The County Motor Fuel Tax Law, 55 ILCS 5/5-1035.1, provides that the county board of the counties of DuPage, Kane and McHenry may impose a tax upon all persons engaged in the county in the business of selling motor fuel (as defined in the Motor Fuel Tax Law) at retail for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways. The County Motor Fuel Tax Law defines "motor fuel" as "all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles." The County Motor Fuel Tax Law further provides that Kane County may exempt diesel fuel from the tax imposed. Notably, however, the statute does not have the same provision for the other counties.

As you pointed out, the County Motor Fuel Tax Law provides that the tax imposed shall be administered, collected and enforced in the same manner as the tax imposed under the Retailers' Occupation Tax, except that in the event of a conflict between the two statutes, the County Motor Fuel Tax Law controls. The Retailers' Occupation Tax provides for a biodiesel blend range that qualifies for an exemption. See 35 ILCS 120/2-10. The County Motor Fuel Tax Law, though, provides for no such exemption. In light of this conflict between the Retailers' Occupation Tax and the County Motor Fuel Law, the County Motor Fuel Law controls. Consequently, the retail sales of the fuel blend you have described are subject to the County Motor Fuel Tax.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Debra M. Boggess
Associate Counsel

DMB:msk