

This letter describes the standard drop-shipment scenario and certificates of resale. 86 Ill. Adm. Code 130.225. (This is a GIL.)

October 26, 2009

Dear Xxxxx:

This letter is in response to your letter dated September 21, 2009, 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:

COMPANY recently received verbal guidance from Karen, Tax Specialist, at the Illinois Department of Revenue regarding sales for resale of distiller grains. Karen indicated she would provide something in writing stating the product is exempt from sales tax and mailed the attached regulations to our office. Please confirm our understanding of the Illinois Department of Revenue Regulations concerning sales of distiller grains for resale.

The facts are as follows:

- Company A ships distiller grains to Company B's customer, Company C, from outside the state of Illinois via rail.
- Company B resells the distillers grains to a Company C within Illinois.
- Company C will feed the grains to cattle.
- Company B is an out of state retailer who does not have nexus with the state of Illinois.

- Company B is not registered with the Illinois Department of Revenue and is unable to provide an Illinois resale certificate to Company A.

Based on Regulations Section 130.1415(f) & (g) and Section 130.2100 (c) Company A is not required to obtain an Illinois Resale Certificate from Company B. The transaction is automatically exempt by the very nature of the product or its intended use.

Thank you for your assistance with this matter. Please contact me at the number below for further questions concerning this request.

DEPARTMENT'S RESPONSE:

The facts as set forth in your letter appear to describe a drop-shipment situation. For general information regarding drop shipments and resale certificates we refer you to the Department's regulations regarding Drop Shipments at 86 Ill. Adm. Code 130.225 and Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale at 86 Ill. Adm. Code 130.1405. A drop-shipment situation is normally one in which out-of-State purchaser (Purchaser) makes a purchase for resale from a company (Company) which is registered with Illinois and has that Company drop-ship the property to Purchaser's customer (Customer) located in Illinois. For purposes of this discussion, it is assumed that Purchaser is an out-of-State company that is not registered with the State of Illinois and does not have sufficient nexus with Illinois to require it to collect Illinois Use Tax.

Company, as a seller required to collect Illinois tax, must either charge and collect tax or document appropriate exemptions when making deliveries in Illinois. In order to document the fact that its sale to Purchaser is a sale for resale, Company is obligated by Illinois to obtain a valid Certificate of Resale from Purchaser. See 86 Ill. Adm. Code 130.1405. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. In addition to the statement that the property is being purchased for resale, a Certificate of Resale must contain:

- 1) the seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) the purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing; and
- 5) Registration Number, Resale Number, or a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois

If Purchaser has no nexus with Illinois, it is unlikely that Purchaser would be registered with Illinois. If that is the case, and if Purchaser has no contact with Illinois which would require it to be registered as out-of-State Use Tax collector for Illinois, then Purchaser could obtain a resale number which would provide it the ability to supply the required number to Company in conjunction with a Certificate of Resale.

Resale numbers are issued to persons who make no taxable sales in Illinois but who need the ability to provide suppliers with Certificates of Resale when purchasing items that will be resold. So long as Purchaser does not act as an Illinois retailer (see 86 Ill. Adm. Code 130.605(a)), and so long as it does not fall under the definition of a "retailer maintaining a place of business in this State" (see 86 Ill. Adm. Code 150.801(c)), its sales to Illinois customers are not subject to Illinois Retailers' Occupation Tax liability, and it cannot be required to act as a Use Tax collector. So long as this is

true, Purchaser qualifies for a resale number that does not require the filing of tax returns with the Illinois Department of Revenue. See 86 Ill. Adm. Code 130.1415. The fact that Purchaser may not be required to act as a Use Tax collector for Illinois does not relieve Customer of Use Tax liability. Therefore, if Purchaser does not collect Illinois Use Tax from Customer, Customer would have to pay its tax liability directly to the Illinois Department of Revenue.

Active registration or placing resale numbers on Certificates of Resale are still the preferred methods. However, the Illinois Retailers' Occupation Tax Act leaves open the possibility of other options to document the resale nature of the sale:

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale. 35 ILCS 120/2c.

Again, including a registration or a resale number from Purchaser on a Certificate of Resale is the preferred method for documenting that the purchase from Company is a purchase for resale. However, in light of this statutory language, a certification from Purchaser on a Certificate of Resale in lieu of resale number which described the drop-shipment situation and the fact that Purchaser has no contact with Illinois which would require it to be registered and that it chooses not to obtain an Illinois resale number would constitute evidence that this particular sale is a sale for resale, despite the fact that no registration number or resale number is provided. The risk run by Company in accepting such a certification, and the risk run by Purchaser in providing such a certification, is that an Illinois auditor may be more likely to go behind a Certificate of Resale which does not contain a valid resale number and require that more information be provided by Company as evidence that the particular sale was, in fact, a sale for resale.

It is possible that, in the situation you describe, the customer (Company C in your description) may be making a purchase for resale under the provisions of Section 130.2100(c) of the Department's rule entitled "Sellers of Feeds and Breeding Livestock." 86 Ill. Adm. Code 130.2100. Please see Section 130.1415(f)-(g) of the Department's rules for how to document such purchases by agricultural producers who are not registered with the Department. 86 Ill. Adm. Code 130.1415.

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.

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk