

This letter concerns whether the gross receipts from a sale of kerosene included the tax imposed on the producer under 26 USCA §4081. See 86 Ill. Adm. Code 130.445(b). (This is a GIL.)

November 9, 2009

Dear Xxxxx:

This letter is in response to your letter dated June 24, 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:

AIRLINE, a commercial airline operating as BUSINESSES purchases aviation fuel for its aircraft. The purchase of aviation fuel is subject to federal excise tax. Below is a summary of how federal excise tax is assessed on aviation fuel.

Under federal law AIRLINE is subject to 4.3 cents of federal excise tax on each gallon of fuel purchased. Internal Revenue Service Section 4041(c)(3) states that fuel used in commercial aviation is taxes [sic] at a rate of 4.3 cents per gallon—AIRLINE's business is commercial aviation.

Internal Revenue Service Section 4081(a)(1) states that the federal excise tax is imposed at the time fuel is removed from a refinery or removed from a terminal. As airlines receive fuel directly from a finery or fuel terminal located at an airport, fuel is assessed federal excise tax of 4.3 cents per gallon under Internal Revenue Service Section 4081(a)(2)(C)—this tax is directly imposed on the airline. At smaller airports where a fuel terminal or refinery is not located on airport property, the excise tax is imposed when the fuel is removed from a fuel terminal or refinery for shipment to the airport. When the fuel company removes fuel from the fuel terminal or refinery, federal excise tax is imposed on the fuel at a rate of 24.3 cents in accordance with Internal Revenue Service Section 4081(a)(2)(A).

When AIRLINE purchases fuel at airports where the fuel is not removed from a terminal or refinery directly into the fuel tank of an aircraft, AIRLINE is assessed tax at the federal excise tax rate of 24.3 cents per gallon. As commercial airlines by law are only assessed 4.3 cents per gallon, Internal Revenue Service Section 6427(1)(4) provides commercial airlines a refund of 20 cents per gallon when the airline is assessed 24.3 cents per gallon. This refund is claimed on quarterly federal excise tax return Form 720.

Illinois Act 120 Retailers' Occupation (Sales) Tax Act section I defines selling price as follows:

Selling price' or the 'amount of sale' means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include charges that are added to prices by sellers on account of the seller's tax liability under this Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act, or on account of the seller's tax liability under Section 8-11-1 of the Illinois Municipal Code, as heretofore and hereafter amended, or on account of the seller's tax liability under the County Retailers' Occupation Tax Act, or on account of the seller's tax liability under the Home Rule Municipal Soft Drink Retailers' Occupation Tax, or on account of the seller's tax liability under any tax imposed under the 'Regional Transportation Authority Act', approved December 12, 1973. Effective December 1, 1985, 'selling price' shall include charges that are added to prices by sellers on account of the seller' tax liability under the Cigarette Tax Act, on account of the seller's duty to collect, from the purchaser, the tax imposed under the Cigarette Use Tax Act, and on account of the seller's duty to collect, from the purchaser, any cigarette tax imposed by a home rule unit.

Currently, AIRLINE is being assessed Illinois Occupational Tax on federal excise tax separately stated on the invoice for jet fuel purchase. The above definition does not address the taxability of federal excise tax that is separately stated on the invoice.

Question #1 - Does the sales price, subject to Illinois Occupational Tax, include separately stated federal excise tax?

Question #2 - If the sales price includes federal excise tax, is the refundable 20 cents of the federal excise tax (when assessed 24.3 cents) subject to Illinois Occupational Tax?

Question #3 - If either of the answers above is no, what is the proper method to file for a refund of Illinois Occupational Tax paid on federal excise tax?

Please contact INDIVIDUAL with any questions or concerns.

DEPARTMENT'S RESPONSE:

The liability for the federal tax in the amount of 4.3 cents per gallon imposed by 26 USCA § 4041(c) on any liquid used as fuel for commercial aviation is on the person who uses the fuel for commercial aviation. 26 USCA § 4081(a)(4). Since the incidence of the tax falls on the consumer, it is not included in gross receipts for purposes of computing Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.455(a). No tax shall be imposed under Section 4041(c) if tax was imposed on such liquid under 26 USCA § 4081 and the tax thereon is not credited or refunded. 26 USCA § 4041(c)(2).

The liability for the federal tax in the amount of 4.3 cents per gallon imposed by 26 USCA § 4081(a)(2)(C)(i) on kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation is on the person who uses the fuel for commercial aviation. 26 USCA § 4081(a)(4). Since the incidence of this tax falls on the consumer, it is not included in gross receipts for purposes of computing Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.455(a)

The liability for the federal tax in the amount of 24.3 cents per gallon imposed by 26 USC § 4081(a)(2)(A)(iii) on kerosene which is not removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation is imposed at the producer level and is a valid element of the cost of the kerosene. Therefore, the tax is included in gross receipts for purposes of computing Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.445(b). The fact that the person who uses the fuel may be able to obtain a refund of all or a portion of the federal tax does not change the fact that the State tax was properly imposed at the time of the purchase. The vendor may not subtract any portion of the amount of the federal tax from gross receipts, whether or not the tax is separately stated, nor may the purchaser obtain a refund from Illinois for the amount of state sales tax paid on the amount of the federal tax for which the purchaser has obtained a refund.

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:mzk