

If a person or an entity purchasing gas falls within the scope of Public Law 105-220, the person or entity distributing, supplying, furnishing or selling the gas is not subject to the Gas Revenue Tax on such sales See 35 ILCS 615/2. (This is a GIL.)

April 29, 2009

Dear Xxxxx:

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

CENTER has requested that the following taxes be removed from our Gas bill: State Gas Revenue Tax (5%) and State Tax (.1%). Upon request of removal of these taxes, we were informed by Gas Company that they require a confirmation from the Illinois Department of Revenue prior to removal of these taxes. Please review the following documentation with regards to our request and confirm via return mail that these taxes should be removed from our bills.

ABC is the operator of the CENTER and as such is eligible for tax exempt status under the provisions of Workforce Investment Act, U.S. Public Law 105-220 dated August, 1998.

Public Law 105-220, title I, Sec. 158,112 Stat. 1016 provides as follows:

(d) Gross Receipts.--Transactions conducted by a private for-profit or nonprofit entity that is an operator or service provider for a Job Corps center shall not be considered to be generating gross receipts. Such an operator or service provider shall not be liable, directly or indirectly, to any State or subdivision of a State (nor to any person acting on behalf of such a State or subdivision) for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes imposed on, or measured by, gross

receipts in connection with any payments made to or by such entity for operating or providing services to a Job Corps center. Such an operator or service provider shall not be liable to any State or subdivision of a State to collect or pay any sales, excise, use, or similar tax imposed on the sale to or use by such operator or service provider of any property, service, or other item in connection with the operation of or provision of services to a Job Corps enter.

Further clarification is provided under the Illinois Administrative Code Title 86, 470.110 and Part 470.160 (a)

Part 470.110

a) There is imposed upon persons engaged in the business of distributing, supplying, furnishing or selling gas to persons for use or consumption and not for resale, a tax at the rate of 5% of the gross receipts from any such business, *2.4 cents per therm of all gas which is so distributed, supplied, furnished or sold or transported to or for each customer in the course of such business, or 5% of the gross receipts received from each customer from such business, whichever is the lower rate as applied to each customer for that customer's billing period, provided that any change in rate imposed by this Amendatory Act of 1985 shall become effective only with bills having a meter reading date on or after January 1, 1986. However, such taxes are not imposed with respect to any business in Interstate Commerce, or otherwise to the extent to which such business may not, under the constitution and statutes of the United States, be made the subject of taxation by this State. Nothing in this Amendatory Act of 1985 shall impose a tax with respect to any transaction with respect to which no tax was imposed immediately preceding the effective date of this Amendatory Act of 1985.* (Ill. Rev. Stat. 1985, ch. 120, par. 467.17.)

b) This tax is an occupation tax. It is imposed upon taxpayers, as defined in the Act, and is not imposed upon persons for whom services within the Act are rendered by such taxpayers, nor is it imposed upon the act of rendering such services. **The amount of tax payable by a taxpayer is to be measured by or to [sic] computed upon a basis of, the gross receipts of the taxpayer from the business of distributing, supplying, furnishing or selling gas for use or consumption.**

Part 470.160

a) Taxpayers are not liable for tax with respect to their receipts from gas distributed, supplied, furnished or sold to the United States Government, its unincorporated departments, agencies or instrumentalities. This would include sales to the United States Defense Department, the United States Post Office Department and other unincorporated departments of the Federal Government; the Interstate Commerce Commission, the Federal Communications Commission; the Atomic Energy Commission and other unincorporated commissions of the Federal Government; the Civil Aeronautics Board, the Federal Reserve Board and other unincorporated boards of the Federal Government, etc.

Pursuant to these Statutes we are prohibited by Federal Law to be imposed these taxes.

If you have any questions or need further information please contact me.

Your prompt attention to this matter is greatly appreciated.

DEPARTMENT'S RESPONSE:

The Gas Revenue Tax Act imposes a tax upon persons engaged in the business of distributing, supplying, furnishing or selling gas to persons for use or consumption and not for resale at the rate of 2.4 cents per therm of all gas which is so distributed, supplied, furnished, sold or transported to or for each customer in the course of such business, or 5% of the gross receipts received from each customer from such business, whichever is the lower rate as applied to each customer for that customer's billing period. 35 ILCS 615/2; 86 Ill. Adm. Code 470.110(a). The Act also states that "such taxes are not imposed with respect to any business in interstate commerce, or otherwise to the extent to which such business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State." 35ILCS 615/2.

The Gas Revenue Tax is not a tax or fee imposed on the consumer of the gas. This tax is an occupation tax. It is imposed upon taxpayers engaged in the business of distributing, supplying, furnishing or selling gas to persons for use or consumption. However, distributors/suppliers of gas are authorized under the Public Utilities Act to collect a "reimbursement" from purchasers of gas. 220 ILCS 5/9-222. Although such a reimbursement is authorized, distributors/suppliers of gas are not required to collect it.

As stated above, the Gas Revenue Tax is not imposed with respect to any business in interstate commerce, or otherwise to the extent to which such business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State." Public Law 105-220 states: "Transactions conducted by a private for-profit or nonprofit entity that is an operator or service provider for a Job Corps center shall not be considered to be generating gross receipts." In addition, Public Law 105-220 states that "an operator or service provider shall not be liable, directly or indirectly, to any State or subdivision of a State (nor to any person acting on behalf of such a State or subdivision) for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes imposed on, or measured by, gross receipts in connection with any payments made to or by such entity for operating or providing services to a Job Corps center."

If a person or an entity purchasing gas falls within the scope of the language contained in Public Law 105-220 stated above, the person or entity distributing, supplying, furnishing or selling the gas is not subject to the Gas Revenue Tax on such sales.

Section 2-202(c) of the Public Utilities Act provides that a tax is imposed upon each public utility subject to the provisions of the Act equal to .08% of its gross revenue for each calendar year commencing with the calendar year beginning January 1, 1982, except that the Commission may, by rule, establish a different rate no greater than 0.1%. Section 9-222 of the Public Utilities Act provides that whenever a tax is imposed upon a public utility pursuant to Section 2-202 of the Act, such utility may charge its customers an additional charge equal to the amount of such tax. 220 ILCS 5/2-202(c). The Department does not administer the tax imposed on public utilities and cannot render any guidance or opinion regarding your request. The proper agency to contact is the Illinois Commerce Commission.

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