

Fuel and petroleum products sold to or used by an air common carrier, certified by the carrier to be used for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight destined for or returning from a location or locations outside the United States without regard to previous or subsequent domestic stopovers is exempt from Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.321. (This is a GIL.)

August 31, 2009

Dear Xxxxx:

This letter is in response to your letter dated August 5, 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 is in the business of providing various Aircraft Services and Aircraft Fuel at Airports which includes the sale of jet fuel in which Illinois Sales Tax is collected and remitted to the State of Illinois.

CUSTOMER, one of our customers at the Airport in CITY, IL, is claiming they operate International commercial flights and is the holder of an FAA Common Air Carrier certificate (copy attached) which authorizes On Demand (Part 135 Charter) operations. Based on this classification CUSTOMER is claiming exemption from Retailer's Occupation (Sales) Tax under IL DOR Regulations (Title 86; Part 130; Section 130.321).

Due to the complexities of the matter, we wish to request a Private Letter Ruling that clarifies whether the type of Certificate held by CUSTOMER meets the qualification criteria on which an exemption from the Sales tax can be provided to CUSTOMER or similarly certificated customer. And, if additional documentation is required to substantiate an exemption for CUSTOMER or similarly certificated customer, what documentation specifically would need to be maintained in COMPANY's records.

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

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department's records indicate the Company is currently under audit. The Department's does not issue Private Letter Rulings when taxpayers are under audit. See Section 1200.110(a)(3)(C). Furthermore, your request generally does not meet all of the requirements of Section 1200.110(b). Although we cannot provide you with a Private Letter Ruling, we believe that the following general information will be of assistance.

Fuel and petroleum products sold to or used by an air carrier, certified by the carrier to be used for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight destined for or returning from a location or locations outside the United States without regard to previous or subsequent domestic stopovers is exempt from Retailers' Occupation Tax. 35 ILCS 120/2-5(22); 86 Ill. Adm. Code 130.321(a). For purposes of the exemption, an air carrier means a commercial air common carrier certified and authorized to conduct international flights involving passengers or cargo for hire, on a regularly-scheduled basis. See Section 130.321(b). A holder of a FAA Common Carrier Certificate which authorizes On Demand (Part 135 Charter) operations does not meet the requirement that international flights for hire be provided on a regularly-scheduled basis and does not qualify for the exemption.

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