

This letter concerns the tax bases for Municipal Retailers' Occupation Taxes that are administered by the Department. See Public Act 85-1135 and 86 Ill. Adm. Code 693.120. (This is a GIL.)

December 8, 2009

Dear Xxxxx:

This letter is in response to your letter dated November 4, 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:

I am the attorney for the VILLAGE, Illinois, a small community located in COUNTY. In 1983, the Village passed an ordinance rescinding its 1% sales tax on farm equipment and machinery. At this time it is reconsidering that decision and may wish to re-impose this tax. The question is, what method would they follow in doing this? I am aware of the section in the Illinois Municipal Code which allows non-home rule cities to impose the 1% sales tax after a referendum (65 ILCS 5/8-11-1.5), but here, the tax is imposed on all other sales already. Is it possible to merely pass a new ordinance repealing the 1983 ordinance that rescinded the tax on these items, and thereby reinstate it? I wondered whether you had had experience with other communities which may have done this and could give me the benefit of such cases.

Please write or call me with your response at the information provided in this letterhead. Thank you for your attention in this matter.

DEPARTMENT'S RESPONSE:

In January, 1990, when sales tax reform was instituted by Public Act 85-1135, the "Municipal Retailers' Occupation Tax" was abolished. The State Retailers' Occupation Tax was raised from 5% to 6.25%, and a portion of the increase began being remitted to municipalities each month. As a result, any local Retailers' Occupation Tax, including exemptions from that tax, that a municipality

imposed before 1990 was abolished and is of no effect after the 1990 legislation. Beginning in 1990, if a municipality did not thereafter impose a local Retailers' Occupation Tax as discussed below, such as the municipality you reference, then any exemption for sales made in that municipality is governed by the State Retailers' Occupation Tax. The State Retailers' Occupation Tax Act contains an exemption for farm machinery and equipment, found at Section 2-5(11). See 35 ILCS 120/2-5(11). This exemption allowed under the State Retailer's Occupation Tax, of course, may not be removed by a municipality.

While the "Municipal Retailers' Occupation Tax" was abolished, new legislation allowed municipalities to enact a similar local tax -- the "Home Rule Municipal Retailers' Occupation Tax" (65 ILCS 5/8-11-1) or the "Non-Home Rule Municipal Retailers' Occupation Tax" (65 ILCS 5/8-11-1.3), as applicable. Municipalities may impose this tax in 1/4% increments (with a cap of 1% for non-home rule municipalities). The tax, however, is administered by the State.

Many municipalities in the State have enacted either a Home Rule Municipal Retailers' Occupation Tax or a Non-Home Rule Municipal Retailers' Occupation Tax. However, as part of sales tax reform, the municipalities are obligated to use the same tax base as the State Retailers' Occupation Tax. In other words, the Home Rule or Non-Home Rule Municipal Retailers' Occupation Tax imposed by municipalities must follow the same rules for exemptions, credits, and other administrative procedures as the State Retailers' Occupation Tax. Consequently, if an item is exempt under the Retailers' Occupation Tax, it is also exempt from the Home Rule and Non-Home Rule Municipal Retailers' Occupation Tax. Both Sections 8-11-1 and 8-11-1.3 of the Illinois Municipal Code mandate that a Home Rule or Non-Home Rule Municipal Retailers' Occupation Tax, as applicable, allow the farm machinery and equipment exemption. They do this by incorporating by reference the provisions of Section 2-5 of the Retailers' Occupation Tax, which contains this exemption. The effect is the same as if Sections 8-11-1 and 8-11-1.3 explicitly contained the provisions of that 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.

Sincerely,

Samuel J. Moore
Associate Counsel