

This letter discusses the requirements for Certificates of Resale. 86 Ill. Adm. Code 130.1405.
(This is a GIL.)

December 21, 2009

Dear Xxxxx:

This letter is in response to your letter dated March 20, 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:

We are requesting a PLR in regards to the following information.

CORPORATION would like to receive information in written form in regards to sales tax in the following situations:

1. If we were to sell fuel to a licensed distributor who furnishes us with a CRT-61 and they default on submitting the sales tax to the State, would CORPORATION be held accountable for the defaulted monies?
2. If we sell fuel to an End-user who defaults on paying the sales tax money to us as their supplier, what avenue does CORPORATION have in obtaining refunds of sales tax monies paid on behalf of the End-User?

This question is being addressed due to the state of the economy and the number of companies currently filing bankruptcy which in turn affects not only CORPORATION but the State.

If we could receive this requested information in writing by Wednesday, Feb 25, 2009, it would be greatly appreciated. Should you have any questions in regards to this request, please call. You can also reach us via e-mail.

Thank you in advance for your assistance in this request.

DEPARTMENT'S RESPONSE:

Sales Tax

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. The retailer must pay Retailers' Occupation Tax to the Department based upon its gross receipts, or actual amount received, from the sale of the tangible personal property.

In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

When a person purchases an item of tangible personal property with the intention of reselling it to a purchaser for use or consumption, that person engages in conduct equivalent to holding himself out as a retailer. This makes the initial purchase a purchase for resale, and the subsequent sale is a taxable sale at retail subject to Illinois Retailers' Occupation and Use Tax liabilities. See 86 Ill. Adm. Code 130.201 and 130.210.

Certificates of Resale

For general information regarding resale certificates, the Department's regulation for resale certificates, "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale," is found at 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, 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) 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.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (*i.e.*, it was not purchased for resale), the Department will proceed against the purchaser, not the

retailer, provided the above stated conditions are met. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

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. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois. The risk run by a retailer in accepting such other documentation and the risk run by purchasers in providing such other documentation is that an Illinois auditor is more likely to require that more information be provided as evidence that the particular sale was, in fact, a sale for resale.

Use Tax Collection

Section 8 of the Use Tax Act (35 ILCS 105/8) states in part that:

"Any retailer required to collect the tax imposed by this Act shall be liable to the Department for such tax, whether or not the tax has been collected by the retailer."

As noted above, retailers keep any Use Tax they collect as reimbursement for the Retailers' Occupation Tax they remit to the Department. If a customer defaults on the Use Tax, the retailer's only remedy would be to bring a lawsuit against the customer for these amounts. The customer's refusal to pay these amounts, however, does not relieve the retailer of the obligation to remit the proper amount of Retailers' Occupation Tax to the Department.

Note, though, retailers who report and pay Retailers' Occupation Tax up front on the total selling price of tangible personal property, even though all gross receipts have not yet been received from the purchaser, file on the "gross sales" basis. Retailers who report and pay Retailers' Occupation Tax on gross receipts actually received on sales of tangible personal property file on the "gross receipts" basis. See 86 Ill. Adm. Code 130.401. The gross receipts basis is the preferred method for filing sales tax returns.

Retailers who do file on the gross sales basis may take a bad debt deduction as an authorized deduction on the ST-1, Sales and Use Tax Return, for the month in which the bad debt was written off for Federal income tax purposes. That is, a bad debt deduction can be taken as an "other deduction" on the sales tax return for the same month in which the bad debt is written off the books for Federal income tax purposes.

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,

Debra M. Boggess
Associate Counsel