

ST-14-0006-GIL 03/07/2014 MACHINERY & EQUIPMENT

This letter discusses the manufacturing, machinery & equipment exemption, the manufacturer's purchase credit, claims for credit, and the rules for obtaining E numbers. See 86 Ill. Adm. Code 130.330 and 86 Ill. Adm. Code 130.331. See also 86 Ill. Adm. Code 130.1501 and 86 Ill. Adm. Code 130.2007

March 7, 2014

Dear Xxxxx:

This letter is in response to your letter dated January 2, 2014, 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 would like a letter ruling on some questions I have about something called sales tax exempt. I could not find the answers to the questions online, so I am writing you for clarification of the answers needed. This is for business purposes.

1. Do manufactures in your state pay sales tax to the DOR?
2. Is there any way I can find out what businesses in your state are sales tax exempt? A list maybe?
3. Is it possible for a business to get the amount of sales tax spent sent back to them? If so how? How often can they do it? Is there a minimum or maximum involved is it possible for a different company to get involved? How?
4. Can a 2nd business help the 1st business become sales tax exempt? Is there any special paperwork needed for this?
5. Do distributors charge the end user (customer) sales tax? Houses for example?
6. If a company only has distributors in that same state it is located in can it become sales tax exempt in that state?

This is my first time with a letter ruling, if you have questions or need more info please send a email to.

DEPARTMENT'S RESPONSE:

Due to the limited information included in your letter, we are unable to provide you a specific answer to your questions. We hope you find this general information helpful.

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 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. 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 purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

Persons who sell tangible personal property must either pay tax or document an exemption. The Manufacturing Machinery and Equipment Exemption from sales tax is available for sales of machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. The process must meet the requirements of manufacturing or assembling set forth in the Department's rules. The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material or materials into a material with a different form, use, or name. These changes must result from the process in question and be substantial and significant.

When a manufacturer purchases manufacturing machinery and equipment, the State of Illinois provides a Manufacturer's Purchase Credit (MPC) in addition to the exemption for manufacturing machinery and equipment. See 86 Ill. Adm. Code 130.331. A purchaser of manufacturing machinery and equipment that is exempt under the manufacturing machinery and equipment exemption also earns MPC in an amount equal to a fixed percentage of the tax which would have been incurred under the Use Tax or Service Use Tax. 35 ILCS 105/3-85; 35 ILCS 110/3-70.

MPC may be used to satisfy Use Tax or Service Use Tax liability that is incurred on the purchase of production related tangible personal property that does not qualify for the manufacturing machinery and equipment exemption. Please note that the amount of MPC that can be applied to a purchase of production related tangible personal property is limited to the State rate of tax incurred on that property (6.25%). MPC cannot be used to satisfy any local taxes incurred on the purchase of production related tangible personal property.

In order for an entity to be exempt from sales and use tax in Illinois, it must obtain an exemption identification number (an "E number") to qualify. See 86 Ill. Adm. Code 130.2007. Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an E number. The E number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax, unless another exemption applies. See 86 Ill. Adm. Code 130.120 for a list of nontaxable transactions. Please be aware that currently only sales to organizations holding the E number are exempt, not sales to individual members of the organization. For example, the purchase of meals by staff and members may not be made tax-free on the basis of the E number issued to a church.

Regarding your question about whether businesses can get the amount of sales tax spent sent back to them, claims for credit and refunds are available when a taxpayer shows that he or she paid tax to the Department as a result of a mistake of fact or law. See 86 Ill. Adm. Code 130.1501. If a retailer collects and remits to the Department tax on an item that should have been exempt as a sale for resale or under some other exemption, the retailer may file a claim for credit. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a credit. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. The Department cannot approve any claim for credit unless the claimant clearly establishes that he or she has unconditionally repaid the amount of the tax to the person from whom he has collected the tax.

The retailer will be considered to have satisfied the unconditional repayment requirement where it provides its purchaser with an instrument upon which the purchaser can make a demand upon the retailer/claimant for payment of the tax recovered if the claim is allowed. The retailer's provision of unconditional promissory notes or irrevocable credit memoranda to its purchasers who paid tax in error would satisfy this requirement. The purpose of requiring the retailer to make an unconditional repayment to its purchasers is to prevent unjust enrichment on the part of the retailer. Therefore, in order to establish that it was not unjustly enriched, the retailer filing a claim for credit must be able to demonstrate that it gave unconditional promissory notes or irrevocable credit memoranda to its purchasers who paid tax in error to the retailer.

We are unsure what you mean by your question about a second business helping a first business become tax exempt. Please see the guidelines above which the Department follows to determine whether a business qualifies for an E number. We are also unsure what you mean by your questions about distributors charging customers sales tax for houses and becoming tax exempt in the state.

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,

Cara Bishop
Associate Counsel

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