

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

October 14, 2008

Dear Xxxxx:

This letter is in response to your email dated June 25, 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:

Thanks for taking my call this morning. This is a follow up to the GIL issued on June 3, 2008, copy attached for your convenience. The information you provided with regard to auction sales was very helpful and most transactions will be auction sales whereby the seller, with cooperation of the purchaser, will need to file the certificate and Form ST-556 for the sale transaction and a resale exemption certificate will not need to be issued to the auction. However, there are other service transactions where the motor vehicle auction performs reconditioning services on motor vehicles held in the dealer's inventory for which the dealer will need to issue a resale certificate to the motor vehicle auction. In these cases, will the certificate be valid if the purchasing dealer provides a MAC resale certificate issued to "Parent Company and Subsidiaries"? As discussed in the original letter, the certificate would be retained by the Parent Company electronically and available to all Illinois auction locations on audit.

Each Illinois auction location is owned by the same company (who is registered as an Illinois service provider) which is a subsidiary of the parent company. We have attached a sample form for your review. Note that the purchaser's name would be added to the form as well as its IBT number for Illinois registration.

thanks for your assistance in providing additional guidance,

DEPARTMENT'S RESPONSE:

In your email you inquire whether a purchaser may provide one Certification of Resale to the Parent Company that identifies the seller as "Parent Company and Subsidiaries." It is our understanding based on the email and the attachment that the actual name of the Parent Company would be inserted but the name of each of the Subsidiaries would not. The blanket Certification of Resale would remain on file with the Parent Company to serve as a Certification of Resale for all purchases made for resale by a purchaser from any of one of the unidentified Subsidiaries.

As noted in the Department's June 3, 2008, response to your earlier letter dated December 17, 2007, 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. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for 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;
- 5) Registration Number, Resale Number, or Certification of Resale to out-of-State Purchaser.

The regulation regarding Certifications of Resale requires that the sellers's name and address be contained on the Certification of Resale. Technically, under your proposal, these requirements will not be met because the certification contains the name and address of the Parent Company and not the name and address of the actual seller. Because of these deficiencies, the Department will not accept the Certificates of Resale as prima facie proof that sales covered thereby were made for resale. The presumption will be that the sale was not for resale. The risk run by the Subsidiaries in relying on such a certification is that an Illinois auditor is more likely to go behind the Certification of Resale and require that more information be provided for every sale that relied on the Certification of Resale as evidence that the sales were, in fact, sales for resale.

The correct method is for the purchaser to provide a Certification of Resale with the name and address of the Subsidiary making the sale. However, as noted above and in the Department's previous letter, the law allows the Department to look at other evidence in determining the sufficiency of a Certification of Resale and rebut the presumption that the sale was not for resale.

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:mks