

ST 13-0070-GIL 11/26/2013 INTERSTATE COMMERCE

This letter discusses sales in interstate and foreign commerce that originate in Illinois. *See* 86 Ill. Adm. Code 130.605. (This is a GIL.)

November 26, 2013

Dear Xxxxx:

This letter is in response to your letter dated October 4, 2013, 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](http://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 1 is requesting reimbursement of Illinois State Tax of DOLLAR AMOUNT which was paid to COMPANY 2 on DATE via bank wire transfer from COUNTRY.

Please find attached the invoice together with the Bill of Ladings and other supporting documentation.

These items were purchased in Illinois for use in Canada (not for resale).

We have also paid our Provincial (Manitoba) and Federal (Canada) Tax on these items.

Please review and advise whether this Illinois State Tax paid qualifies for a refund to COMPANY 1.

Thank you for your attention to this matter and we look forward to your response.

**DEPARTMENT’S RESPONSE:**

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. The tax is measured by the seller's gross receipts from such sales made in the course of such business. *See* 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* 86 Ill. Adm. Code 150.101. Mere possession in Illinois is considered a use. Consequently, if the purchase occurs in Illinois, the purchaser must pay the Use Tax to the retailer. Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State immediately transports the property out of this State for use outside the State. *See* 86 Ill. Adm. Code 130.605(a)(2). The State of Illinois has no specific exemption for purchases by foreign or domestic travelers if the property is delivered and used in Illinois. Section 130.605 identifies a number of exceptions to this rule.

The Department's regulation regarding Sales of Property Originating in Illinois, 86 Ill. Adm. Code 130.605(d) provides that tax does not apply to gross receipts from sales in which the seller either by carrier (when the carrier is not also the purchaser) or by mail, under the terms of his agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State. The fact that the purchaser actually arranges for the common carrier or pays the carrier that effects delivery does not destroy the exemption. However, it is critical that the seller is shown as the consignor or shipper on the bill of lading. If the purchaser is shown as either the consignor or the shipper, the exemption will not apply.

Please note that under Section 130.605(g), retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales. However, there is no exemption for property delivered in Illinois to foreign vessels. If foreign vessels purchase items of tangible personal property from Illinois retailers and have those items delivered to the vessels in an Illinois port, the sale is made in Illinois, the purchaser takes possession of the items in Illinois, and therefore, the sale is taxable. In order to reflect this exemption on the ST-556 form, one should check the "other" box and note that the sale was made into foreign commerce.

To establish that the gross receipts from any given sale are exempt because the tangible personal property is delivered by the seller from a point within this State to a point outside this State under the terms of an agreement with the purchaser, the seller will be required to retain in his records, to support deductions taken on his tax returns proof that satisfies the Department that there was an agreement and a bona fide delivery outside this State of the property that is sold. *See* 86 Ill. Adm. Code 130.605(f).

Claims for credit and refunds are available when a taxpayer shows that he paid tax to the Department as a result of a mistake of fact or law. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a refund. Consequently, in cases such as yours, only the retailer who remitted the tax to the Department is able to file a claim for a refund. Under Illinois sales tax laws, however, retailers are not required to file claims for credit. The Department has

no authority to compel sellers to file a claim for credit. Whether or not a seller refunds the taxes paid and files a claim for credit with the Department is a private matter between the seller and the purchaser.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Cara Bishop  
Associate Counsel