

ST 13-0071-GIL 11/13/2013 SERVICE OCCUPATION TAX

Prior to Public Act 98-583, water service utilities generally acted as de minimis unregistered servicemen with respect to chemicals used in providing water service. As such, they would pay Use Tax to their suppliers for the chemicals. Public Act 98-583 provides that water that is delivered to customers through pipes, pipelines, or mains is not subject to tax under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, or the Retailers' Occupation Tax Act. Therefore, chemicals transferred as a component part of the water are not subject to these taxes. See 86 Ill. Adm. Code 140.108 and Public Act 98-583. (This is a GIL.)

November 13, 2013

Dear Xxxxx:

This letter is in response to your letter dated DATE, 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:

Please accept this letter as our request for a Private Letter Ruling regarding the applicability of the Retailers' Occupation Tax to our purchase of various water treatment chemicals. For the entire chemical purchases which are determined to be exempt from the Retailers' Occupation Tax COMPANY, Taxpayer Identification Number: XX-XXXXXXX, requests a refund of taxes in the amount of AMOUNT paid to the Illinois Department of Revenue during DATE 1 – DATE 2.

FACTS

COMPANY is a publicly held water service utility located in the state of Illinois that purifies and treats water for ultimate distribution and sale to consumers in the state. In the course of our operations we purchase various chemicals for use in the treatment of the water. Many of these chemicals remain in the water ultimately sold to a customer in Illinois.

We are in possession of a Private Letter Ruling from 1992 which listed chemicals as being exempt because they ultimately remain in the water sold to customers. We also understand that all Private Letter Rulings that are over 10 years old are revoked and may no longer be relied [sic]. Further, COMPANY acknowledges that it has not been able to find any authority contrary to its 1992 Private Letter Ruling. The tax period under question is DATE 1 – DATE 2 and an audit is currently pending with the Illinois Department of Revenue for audit period DATE 1 – Date 3.

The chemicals listed below are used directly in the water treatment process and / or guarantee the integrity of the product and touch directly on the production process. It is these chemicals we are asking the State of Illinois to determine the taxability of.

CHEMICALS

1. Alum Polymer – Used in the water purification process. The major portions of the molecular constituents remain in the water that is sold.
2. Ammonia – Used for primary disinfection purposes. Its constituents remain in the water that is sold.
3. Aluminum Chlorohydrate – Used in the water purification process. The major portions of the molecular constituents remain in the water that is sold.
4. Carbon Dioxide – Used to control hardness of the water and prevent loss of ammonia feed, which is used in the disinfection process to treat contaminants. Its constituents remain in the water that is sold.
5. Chlorine – Used for primary disinfection purposes. Its constituents remain in the water that is sold.
6. Ferric Chloride – Used in the water purification process. The major portions of the molecular constituents remain in the water that is sold.
7. Hydrofluosilicic Acid – Added to the water to help prevent dental decay. Its constituents remain in the water that is sold.
8. Ortho Poly Phosphate Blend – Used to prevent corrosion of supply and distribution lines and the leaching of contaminants such as lead and copper into the water. Its constituents remain in the water that is sold.
9. Phosphoric Acid – Used to control pH water. Its constituents remain in the water that is sold.
10. Poly Aluminum Sulfate Blend – Used in the water purification process. The major portions of the molecular constituents remain in the water that is sold.
11. Polymer – Anionic – Used as an aid to both flocculation and filtration process. Its constituents remain in the water that is sold.
12. Potassium Permanganate – Used as a pre-filtration oxidant to prevent the growth of microorganisms that can contaminate potable water. Most of the chemical is removed as part of waste sludge after serving its purpose.

13. Sodium Chloride – Used to control hardness of the water and prevent loss of ammonia feed, which is used in the disinfection process to treat contaminants. Its constituents remain in the water that is sold.
14. Sodium Hypochlorite – Used for primary disinfection purposes. Its constituents remain in the water that is sold.
15. Sodium Permanganate – Used as a pre-filtration oxidant to prevent the growth of microorganisms that contaminate potable water. Most of the chemical is removed as part of the waste sludge after serving its purposes.
16. Sodium Silicate – Used to prevent corrosion of supply and distribution lines and the leaching of contaminants such as lead and copper into the water. Its constituents remain in the water that is sold.
17. Zinc Orthophosphate – Used to prevent corrosion of supply and distribution lines and the leaching of contaminants such as lead and copper into the water. Its constituents remain in the water that is sold.

It is for the above reasons that COMPANY respectfully requests that the State of Illinois provide a Private Letter Ruling with respect to the water treatment chemicals that remain in the water. Further we are presenting a detailed schedule of use tax overpaid on the above mentioned chemicals for purposes of a refund claim. In addition we are attaching the Private Letter Ruling from January, 1992 for your review.

Thank you in advance for your consideration on this matter.

DEPARTMENT'S RESPONSE:

Whether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. 2 Ill. Adm. Code 1200.110(a)(4). The Department declines to issue the requested private letter ruling because the claim for credit filed by COMPANY is currently being examined as a part of a Department audit of the claim. 2 Ill. Adm. Code 1200.110(a)(3)(C) However, we hope that you find the following general information helpful.

Prior to the passage of P.A. 98-583, water service utilities that delivered water to customers through pipes, pipelines, or mains were not acting as retailers, rather, they were servicemen subject to either Service Occupation Tax or Use Tax, depending on how or whether they were registered with the Illinois Department of Revenue. Generally, water service utilities operated as unregistered de minimis servicemen. See 86 Ill. Adm. Code 140.108. This would be the case if the annual aggregate cost price of tangible personal property (water and chemicals) transferred incident to the sale of service (water service) by the water service utilities were less than 35% of the serviceman's annual gross receipts from service transactions (gross receipts from providing water service). As unregistered de minimis servicemen, water service utilities would satisfy their tax liability by paying Use Tax to their suppliers for chemicals used in providing water service. If the chemicals were purchased from out-of-state retailers who were not registered with the Illinois Department of Revenue to collect Use Tax, then the water service

utilities were required to satisfy their Use Tax liability by filing returns directly with and paying tax directly to the Illinois Department of Revenue.

Public Act 98-583 states that sales/purchases of water that is delivered to customers through pipes, pipelines, or mains are not subject to tax under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, or the Retailers' Occupation Tax Act. It goes on to state that these provisions are declaratory of existing law. See 35 ILCS 105/3, 35 ILCS 110/3, 35 ILCS 115/3, and 35 ILCS 120/2. It follows then, that purchases of chemicals that are transferred as a component part of the water that is not subject to tax under any of these Acts are also not subject to tax under these Acts. In essence, the water service utility would purchase the chemicals tax-free for resale, and then not be subject to tax when transferring the items as a component part of the water transferred incident to the sale of water service, since the water is excluded from tax under the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act.

It should be noted, however, that purchases of chemicals that are consumed in the process of providing water service but that are not transferred as a component part of the water provided as part of the service continue to be subject to tax. With respect to these chemicals, a water service utility that is not registered as a serviceman or required to be registered as a retailer with the Department must pay Use Tax to its supplier or, for purchases from out of state retailers who are not registered to collect Illinois Use Tax, self-assess and remit Use Tax directly to the Illinois Department of Revenue.

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,

Samuel J. Moore
Associate Counsel