

To purchase items of tangible personal property tax-free for the purposes of resale, purchasers should submit properly completed Certificates of Resale to sellers. In order for a Certificate of Resale to be valid in Illinois, it must contain the items of information set out in 86 Ill. Adm. Code 130.1405(b). See 86 Ill. Adm. Code 130.1405. (This is a GIL.)

September 11, 2015

Dear Mr. XXXX:

This letter is in response to your letter dated July 27, 2015, 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:

RE: Request for general information letter on the procedure that an auto dealer should follow in order to obtain a credit or refund for sales tax paid on gasoline that is resold with a new car.

FACTS

An Illinois auto dealership does not have gasoline storage tanks on its premises and does not buy “bulk” fuel. It is more convenient to open an account with a nearby retail gasoline station. When the dealership sells a new car to a customer, the dealership fills the gas tank of the car for the customer before the customer leaves with their new car. The dealership pays the nearby gasoline station (unrelated party) for the gas. While there is no separate charge for the full tank of gasoline for the car, the customer understands that the price they are paying the auto dealer for the car includes the full tank of gas, even though the price for the gas is not separately itemized on the invoice for the car which the dealer issues to the customer. Therefore the dealership’s purchase of gasoline to fill up the customer’s gas tank is a purchase for resale. However, the dealership has paid sales tax on the gasoline used to fill up the new car customer’s gas tank because the dealership bought the gas at a nearby retail gasoline station.

QUESTIONS

1. What records does the dealership need to keep in order to document that it purchased a full tank of gas, for the new car buyer's use, after the new car buyer has possession of the car the dealer sold the customer? Is it sufficient to keep a listing of the dates and details on the vehicles that were sold (such as a Vehicle Identification Number) during a particular month, together with receipts for the gasoline purchases?
2. What procedure/form does the new car dealer follow/file in order to claim a credit or refund, for the sales tax paid to the nearby retail gasoline station, on the full tank of gasoline which was sold with the vehicle?

ALTERNATIVE FACT PATTERN

An Illinois auto dealership has a gasoline bulk storage tanks [sic] on its premises. All gasoline delivered to this bulk storage tank in [sic] purchased sales tax free. The auto dealership gives it [sic] vendor a resale certificate which covers all the gasoline that the vendor delivers to the bulk storage tank. As in the original fact pattern, when the dealership sells a new car to a customer, the dealership fills the gas tank of the car for the customer before the customer leaves with their new car. While there is no separate charge for the full tank of gasoline for the car, the customer understands that the price they are paying the auto dealer for the car includes the full tank of gas, even though the price for the gas is not separately itemized on the invoice for the car which the dealer issues to the customer.

The auto dealership maintains records documenting the number of gallons, and dealership's cost, for gasoline used during the month as follows.

1. Number of gallons of gasoline used, and its cost, to provide a full tank of gas for new car customers.
2. Number of gallons of gasoline used, and its cost, for any purposes other than #1 above. Auto dealership pays use tax on the cost of gasoline used for the purposes mention in #2 above via its Form ST-1 filings.

QUESTION REGARDING ALTERNATIVE FACT PATTERN

Would you agree that the auto dealer has appropriately used a resale certificate to purchase 100% of the gasoline delivered to its bulk storage tank for resale? Would you agree that the auto dealership' only liability is for use tax on the gasoline, when used as described in #2 above?

Thanks in advance. My email address is NAME@EMAIL.

DEPARTMENT'S RESPONSE:

Claims for credit and refunds are available when a person 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. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. Claims for credit shall state the requirements that are contained in subpart (b) of the regulation. See 86 Ill. Adm. Code 130.1501(b).

Please note that the Department has no authority to compel the seller of the gasoline that you purchased to file a claim for credit. Whether or not the seller files a claim for credit with the Department is a private business matter.

Where an Illinois registered seller makes a sale in Illinois, it must either charge tax or document an exemption. To purchase items of tangible personal property tax-free for the purposes of resale, purchasers should submit properly completed Certificates of Resale to sellers. In order for a Certificate of Resale to be valid in Illinois, it must contain the items of information set out in 86 Ill. Adm. Code 130.1405(b).

Please also note that a sale for resale is one in which the seller purchases tangible personal property for purposes of reselling the property. Your letter states that there is no additional charge to the customer for the tank of gas which is included with the new car. If you are not reselling an item of tangible personal property you must pay the Use tax on the item. You are considered the user of items that you use or consume as well as items that you give away. In order to properly utilize a resale certificate, the dealership must ensure that it can prove that the item was actually resold (such as invoices to customers or other documentation demonstrating that the property was resold to the customer). Because the price of the motor fuel also includes Motor Fuel Tax and Retailers' Occupation Tax, whether the dealership can purchase the motor fuel tax-free for resale depends on whether the retailer utilizes a billing method that can separate out and subtract the sales tax on the fuel (for instance, a credit card billing system that deducts the sales tax from the total).

In the alternative, if the dealership chooses to maintain a bulk storage tank for gasoline on the premises the dealership will be considered a retailer of motor fuel. The dealership could purchase the motor fuel free of Retailers' Occupation Tax for purposes of resale if it is reselling the motor fuel to customers. This does not include any amount of fuel that the dealership will use. The dealership will need to utilize a formula to identify the percentage of fuel that it will actually resell. The dealership should then provide the distributor with a resale certificate for the percentage of fuel that it purchases which will be resold. The dealership should also maintain accurate books and records that reflect the amounts resold, used, or consumed. The dealership will also be required to prepay sales tax upfront to its distributor. See 35 ILCS 120/2d for prepaid sales tax requirements for retailers of motor fuel. The dealership will then be required to collect and remit tax on the motor fuel that it sells to customers. The dealership could take a credit on the Form ST-1 for any prepaid sales tax that it previously paid, and the dealership would also pay tax on the Form ST-1 for any of the motor fuel that it used for purposes other than reselling to its customers. The dealership should also use caution when filing returns as the sale of the car reported on the Form ST-556 should not include the price of the tank of gas as part of gross receipts because it is accounted for on the ST-1.

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

CJB:mdb