

ST 15-0070-GIL 11/30/2015 SALE FOR RESALE

This letter addresses sales for resale. See 86 Ill. Adm. Code 130.1405. (This is a GIL.)

November 30, 2015

Dear Xxxxx:

This letter is in response to your letter dated September 24, 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:

ABC is a freight hauler in the Fuel industry and deliver loads for a large number of different customers. On occasion, there are loads that are pulled on a given customer, but the fuel is actually delivered to another customer, possible competitor of who the load was pulled on. In this case, the wrong customer gets charged for all the fuel and related taxes. When this happens we attempt to have the seller of the fuel correct the billing, to bill the correct customer for the product; however, there are times when this is not possible. In return, the customer charged for the fuel and taxes invoices ABC for the product and all taxes. ABC, therefore, invoices the receiving customer for the product and the related taxes.

We have been in contact with the Illinois Tax Department regarding this topic and have resolved our responsibilities for the Illinois Excise taxes and Motor Fuel taxes. When it came to the question of the State Use Tax, they were unable to answer our questions and recommended we contact the Legal Services Department. After several attempts, we were told we had to contact the Legal Services Department by letter and then someone could contact us.

Would someone please call me at ABC, to assist us on questions we have regarding Illinois State Use Tax.

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. 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. 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.

The exact nature of the transactions you describe is not clear from the limited information in your letter. Based on the representations made in your letter, it appears that the transactions involved are exempt from sales tax as sales for resale. Sales for resale must be properly documented or sellers must charge tax. Mere statements by sellers that property was sold for resale will not be accepted by the Department without corroborative evidence. Certificates of Resale may be made a part of purchase orders signed by the purchaser.

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. Please note that the certificate must be signed by the individual making the purchase. The registration number on the certificate must also be that of the purchaser. Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale (Section 2c of the Act). 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 Certificate of Resale to Out-of-State purchaser:
 - a) purchaser's registration number with the Illinois Department of Revenue; or
 - b) purchaser's resale number issued by the Department of Revenue; or
 - c) a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

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,

Debra M. Boggess
Associate Counsel