

Diesel fuel consumed or used in the operation of ships, barges, or vessels, that are used primarily in or for the transportation of property in interstate commerce for hire on rivers bordering on this State and delivered by a licensed receiver to the purchaser's barge, ship, or vessel while it is afloat upon that bordering river is exempt from the Environmental Impact Fee and the Motor Fuel Tax. See 415 ILCS 125/310 and 35 ILCS 505/2a. (This is a GIL.)

November 23, 2016

RE: Request for Private Letter Ruling

Dear Xxxxx:

This letter is in response to your letter dated July 13, 2016, 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:

We respectfully request a private letter ruling with respect to exemptions related to the Illinois Underground Storage Tank Tax and the Illinois Environmental Impact Fee.

35 ILCS section 505/2a and 415 ILCS section 125/310 each provide an identical exemption from the Illinois Underground Storage Tank Tax and the Illinois Environmental Impact Fee, respectively, for

Diesel fuel consumed or used in the operation of ships, barges, or vessels, that are used primarily in or for the transportation of property in interstate commerce for hire on rivers bordering on this State, if the diesel fuel is delivered by a licensed receiver to the purchaser's barge, ship, or vessel while it is afloat upon that bordering river.

The operations of two customers of COMPANY (the Company) appear to meet the requirements of the above exemptions but the Company would prefer to have a private letter ruling clarifying the Departments interpretation.

COMPANY 1 (“COMPANY 1”) contracts with third parties to build locks and dams on the Inland Waterways. COMPANY 1 operates vessels that are used primarily to transport the property needed to build the locks and dams in interstate commerce; but for COMPANY 1’s transportation of the building materials, it could not perform its hired services. Therefore, COMPANY 1’s transportation services involve the transportation of property, the services are for hire, its vessels operate on a river that borders Illinois (the Mississippi River), and the diesel fuel is delivered by COMPANY 2, a licensed receiver, to COMPANY 1’s vessels, midstream, while they are afloat on the Mississippi River.

COMPANY 3 (“COMPANY 3”) repairs boats and barges. COMPANY 3 primarily uses its vessels to travel to a tow and remove a vessel (property) for the purpose of transporting and delivering the vessel for repair; to transport a repaired vessel from a repair facility to a tow (a group of barges moving in interstate transport); and, to move vessels to/from various fleeting sites before and after the repairs are performed. Therefore, COMPANY 3’s tow services involve the transportation of property, the services are for hire, it operates the towboats on a river that borders Illinois (the Mississippi River), and the diesel fuel is delivered by COMPANY 2, a licensed receiver, to COMPANY 3’s vessels, midstream, while they are afloat on the Mississippi River.

Although these companies are hired to work on property (i.e. COMPANY 1 builds locks and dams and COMPANY 3 repairs vessels), the exemptions provided in 35 ILCS section 505/2a and 415 ILCS section 125/310 do not state that the end user’s primary business must be the transportation of property in interstate commerce for hire; instead, these exemptions state that **the vessel that consumes the purchased fuel be used primarily in or for the transportation of property in interstate commerce for hire.** COMPANY 1 and COMPANY 3 both primarily use their vessels in the transportation of property in interstate commerce for hire, and without this transportation of property in interstate commerce, they could not perform the services they are hired to perform. If COMPANY 1 did not transport the building materials itself, or if COMPANY 3 did not transport the barges for repair, each company would be required to hire a third-party in the business of providing transportation of property, if that were the case, such third party would qualify for the exemptions from the Illinois Underground Storage Tank Tax and the Environmental Impact Fee. The relevant statutes do not require that the receiver be primarily in the business of moving property; it requires that the vessels be primarily used to transport property in interstate commerce.

Accordingly, we respectfully request an informal and confidential private letter ruling on our customers’ eligibility for the exemptions provided by 35 ILCS section 505/2a and 415 ILCS section 125/310.

If you have any questions or need any additional information, I can be reached by email at PERSON@COMPANY.com or by phone at ###.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope however, the following General Information Letter will be helpful in addressing your questions.

The Motor Fuel Tax Law imposes a tax upon the privilege of being a receiver in this State of fuel for sale or use. The tax is paid by a receiver in this State who first sells or uses fuel. The tax must be stated as a separate item on the invoice. 35 ILCS 505/2a. Section 2a also states:

"[N]o tax shall be imposed upon diesel fuel consumed or used in the operation of ships, barges, or vessels, that are used primarily in or for the transportation of property in interstate commerce for hire on rivers bordering on this State, if the diesel fuel is delivered by a licensed receiver to the purchaser's barge, ship, or vessel while it is afloat upon that bordering river. A specific notation thereof shall be made on the invoices or sales slips covering each sale."

The Environmental Impact Fee Law subjects all receivers of fuel to an environmental impact fee on fuel that is sold or used in Illinois. The fee is paid by a receiver in this State who first sells or uses the fuel. 415 ILCS 125/310. Section 310 of the Environmental Impact Fee Law contains the same exemption as the Motor Fuel Tax Law quoted above.

The exemption contains several conditions: 1) the fuel must be used or consumed in the operation of ships, barges, or vessels that are used primarily in or for the transportation of property in interstate commerce for hire on rivers bordering on this State; and 2) diesel fuel is delivered by a licensed receiver to the purchaser's barge, ship, or vessel while it is afloat upon that bordering river. It is not sufficient that the fuel is used or consumed by the ships, barges, or vessels transporting property on rivers bordering the State. The ships, barges, or vessels must be used in or for the transportation of property in interstate commerce "for hire".

We have reviewed the scenarios provided in your letter. We do not believe the exemption applies to the first scenario. It does not appear the contractor is using the ships, barges, or vessels for the transportation of property in interstate commerce for hire. The vessels are being operated by the contractor on its own behalf to transport

property to fulfill the contractor's obligation to build the locks or dams for the third-parties.

In the second scenario, the exemption may apply if the tow service provided by the company is contracted for separately from the repair service. If a customer contracts with the company for the repair of a vessel and the company must tow the vessel to fulfill the service, the exemption will not apply. If the company contracts with the customer to repair a vessel and contracts with the customer to transport the vehicle to and from the repair site, the exemption may apply if all other requirements of the exemption are met.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, 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:bkl