

A licensed motor fuel distributor may make tax free sales of motor fuel with respect to which he is otherwise required to collect the motor fuel tax when a sale of dyed diesel fuel is made to someone other than a licensed distributor or a licensed supplier for non-highway purposes and the fuel is delivered from a vehicle designed for the specific purpose of such sales (i) directly into a stationary bulk storage tank that displays the notice required by Section 4f of this Act, or (ii) directly into the fuel supply tanks of non-highway vehicles that are not required to be registered for highway use. See 35 ILCS 505/6(7); 86 Ill. Adm. Code 500.210(g). (This is a PLR.)

October 27, 2020

Dear Xxxx:

This letter is in response to your letter dated September 16, 2019, in which you requested 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY A, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY A, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

As counsel for, and on behalf of COMPANY A, Pursuant to 2 Ill. Admin. Code §1200.110, we hereby formally request a Private Letter Ruling ("PLR") confirming that based upon the facts as represented below:

- (i) Taxpayer's sales of dyed diesel fuel to COMPANY B satisfy the statutory preconditions for tax-free treatment and are eligible for the exemption from the Illinois Motor Fuel Tax granted to certain sales of dyed diesel fuel.

Taxpayer is currently conversing with the Department regarding this issue and has been advised by the Department to seek this ruling. Taxpayer is not aware of any authority contrary to the views expressed in this PLR request. Furthermore, we ask that

Taxpayer's name, address, and any contracts which are attached be kept confidential and deleted from the publicly disseminated version of a PLR issued in response to this request. A Power of Attorney authorizing me to represent Taxpayer before the Department in connection with this PLR is attached as **Exhibit A**.

## **FACTS**

Taxpayer has historically been an Illinois-licensed motor fuel distributor and supplier. In April 2016, Taxpayer and COMPANY B ("COMPANY B") entered into a supply agreement ("Agreement") under which Taxpayer agreed to make sales of dyed diesel fuel to COMPANY B and deliver the purchased fuel directly to COMPANY B's Illinois customers. A copy of this agreement is attached as **Exhibit B**.

COMPANY B is a STATE corporation that operates a nationwide digital fuel exchange marketplace for industrial and commercial fuel purchasers. This exchange connects fuel suppliers with fuel purchasers and provides a secure transactional platform. COMPANY B has no physical presence in Illinois and is not an Illinois-licensed motor fuel distributor or supplier. COMPANY B does not take physical possession of fuel that [sic] purchased or sold through its exchange. Rather, COMPANY B directs fuel sellers to deliver purchased fuel directly to the buyer's location.

Taxpayer delivers dyed diesel sold through COMPANY B's exchange in a vehicle that is designed specifically for delivering this fuel. Deliveries in Illinois are made either (1) to stationary bulk storage tanks that bear the notice "Dyed Diesel Fuel, Non-taxable Use Only" or (2) directly into the fuel supply tanks of off-highway vehicles.

Taxpayer fulfilled its obligations under the Agreement without intervention from the Department until January 2019. At that time, the Department determined that Taxpayer's sales of dyed diesel to COMPANY B are taxable solely because COMPANY B is not an Illinois-licensed reseller of motor fuel. Accordingly, the Department issued Notices of Tax Liability ("NTLs") to Taxpayer for unpaid Motor Fuel Tax on dyed diesel sales to COMPANY B dating back to 2016. Taxpayer unsuccessfully attempted to contest the assessed liabilities, but did not pay the liabilities, and ultimately lost its motor fuel license in April 2019.

Taxpayer reapplied for its license and commenced a payment plan to settle its historic liabilities with the Department in August 2019. In order to resolve the prospective question of whether Taxpayer's sales of dyed diesel fuel to COMPANY B are eligible for tax-free treatment, the Department has urged Taxpayer to seek a PLR.

## **ILLINOIS MOTOR FUEL TAX LAW**

Section 6 of the Illinois Motor Fuel Tax Law (35 ILCS 505/6) provides that a distributor may make tax-free sales of motor fuel in certain instances. One such instance is the sale of dyed diesel fuel "made to someone other than a licensed distributor or licensed supplier for non-highway purposes" if the fuel is

- i. delivered from a vehicle designed for the specific purpose of such sales and delivered directly into a stationary bulk storage tank that displays the notice required by Section 4f of this Act,<sup>1</sup>
- ii. delivered from a vehicle designed for the specific purpose of such sales and delivered directly into the fuel supply tanks of non-highway vehicles that are not required to be registered for highway use, or
- iii. dispensed from a dyed diesel fuel dispensing facility that has withdrawal facilities that are not readily accessible to and are not capable of dispensing dyed diesel fuel into the fuel supply tank of a motor vehicle.

35 ILCS 505/6(7) (emphasis added). An identical exception exists for sales of dyed diesel made by a supplier. 35 ILCS 505/6a(5). The Motor Fuel Tax Law defines many of the above terms.

“Distributor” is defined as a person who either “(i) produces, refines, blends, compounds or manufactures motor fuel in this State, or (ii) transports motor fuel into this State, or (iii) exports motor fuel out of this State, or (iv) engages in the distribution of motor fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he or she has active bulk storage capacity of not less than 30,000 gallons for gasoline[.]” 35 ILCS 505/1.2.

“Supplier” is defined as a “person other than a licensed distributor who (i) transports special fuel into this State; (ii) exports special fuel out of this State; or (iii) engages in the distribution of special fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he has active bulk storage capacity of not less than 30,000 gallons for special fuel[.]” 35 ILCS 505/1.14.

“Special Fuel” is defined as “all volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine” other than gasoline or combustible gases. 35 ILCS 505/1.13. “Special Fuel” includes diesel fuel. *Id.*

Dyed diesel fuel is special fuel which has been dyed using a designated solvent. 35 ILCS 505/1.13B, 505/4d. Dyed diesel fuel is designated solely for non-highway use. 35 ILCS 505/4d.

## **LEGAL ANALYSIS**

Re-stated, the Illinois Motor Fuel Tax Law imposes three qualifying preconditions on tax-free sales of dyed diesel. First, the seller must be either a distributor or a supplier. Second, the buyer may not be a licensed distributor or supplier.<sup>2</sup> Third, the dyed diesel must be sold for non-highway use. If each of these three preconditions are met, then the transaction is analyzed using the delivery and documentation requirements to determine if the transaction is excepted from Motor Fuel Tax. None of the delivery or documentation requirements are dependent on the buyer’s status.

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<sup>1</sup> 35 ILCS 505/4f requires “A legible and conspicuous notice stating “Dyed Diesel Fuel, Non-taxable Use Only” must appear on all containers, storage tanks, or facilities used to store or distribute dyed diesel fuel.”

<sup>2</sup> Transactions among licensed distributors and suppliers holding valid, unrevoked licenses are also exempt from sales tax [sic] if a special notation is on the invoice or sales slip covering each sale. 35 ILCS 505/6(6); 505/6a(4).

Taxpayer engages in the business of distributing motor fuels and special fuels primarily by tank truck and maintains active bulk storage of greater than 30,000 gallons. Taxpayer anticipates its motor fuel license will be restored prior to future sales of dyed diesel through the COMPANY B exchange. Taxpayer therefore meets the requirements for both distributors and suppliers for the purposes of the dyed diesel motor fuel tax exception.

COMPANY B does not hold an Illinois license to either distribute or supply motor fuel or special fuel within that state. COMPANY B is therefore a person other than a licensed distributor or licensed supplier.

The dyed diesel fuel that Taxpayer delivers to COMPANY B's customers is used in vehicles such as all-terrain vehicles and other recreation vehicles that are not permitted to operate on Illinois highways. Accordingly, the dyed diesel is sold for non-highways use.

Based on the relevant statutes, taxpayer's sales of dyed diesel fuel to COMPANY B satisfy each of the three statutory qualifying preconditions. These sales are therefore eligible for the exception from the Illinois Motor Fuel Tax granted to certain sales of dyed diesel fuel.

### **REQUEST FOR RULING**

Pursuant to 2 Ill. Admin. Code Section 1200.110, Taxpayer respectfully requests that the Department issue a private letter ruling declaring:

- (i) Taxpayer's sales of dyed diesel fuel to COMPANY B satisfy the statutory preconditions for tax-free treatment and are eligible for the exception from the Illinois Motor Fuel Tax granted to certain sales of dyed diesel fuel.

If you concur, please issue your favorable ruling to the undersigned. If you do not concur, please advise so that we may discuss your reasoning before an adverse ruling is issued.

### **DEPARTMENT'S RESPONSE:**

Section 2 of the Motor Fuel Tax Law, 35 ILCS 505/2, imposes a tax on "the privilege of operating motor vehicles upon the public highways and recreational-type watercraft upon the waters of this State." Beginning July 1, 2019, the rate of tax imposed on all motor fuel used in motor vehicles operating on the public highways and recreational type watercraft is 38 cents per gallon, increased on July 1 of each subsequent year by an amount equal to the percentage increase, if any, in the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor for the 12 months ending in March of each year, rounded to the nearest one-tenth of one cent.. Beginning on July 1, 2019, the tax on the privilege of operating motor vehicles which use diesel fuel, liquefied natural gas, or propane is at the rate of tax on motor fuel plus an

additional 7½ cents per gallon. For current tax rates on motor fuel and diesel, please see the Department's tax rate database at [tax.illinois.gov](http://tax.illinois.gov).

"Motor fuel" is defined as "all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles. Among other things, 'Motor Fuel' includes 'Special Fuel.'" "Special fuel" is defined as "all volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine except that it does not include gasoline as defined in Section 5, example (A), of [the Motor Fuel Tax Law], or combustible gases as defined in Section 5, example (B), of [the Motor Fuel Tax Law]. 'Special Fuel' includes diesel fuel as defined in paragraph (b) of Section 2 of [the Motor Fuel Tax Law]." "Diesel fuel" is defined as "any product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark."

Generally, Motor Fuel Tax is due when motor fuel is purchased. Persons other than distributors or suppliers who lose motor fuel through any cause or use motor fuel upon which the Motor Fuel Tax has been paid for any purpose other than operating a motor vehicle upon the public highways or waters, shall be reimbursed and repaid the amount so paid. See 86 Ill. Adm. Code 500.235. Distributors and suppliers may file claims for credit. See 86 Ill. Adm. Code 500.265. Section 13 of the Motor Fuel Tax Law sets forth the provisions for such reimbursement. No claims based upon idle time are allowed.

Beginning January 1, 2000, the State of Illinois implemented a dyed diesel fuel program. This program provides for tax-free purchases of dyed diesel fuel that will be used for nonhighway purposes. Section 6 of the Motor Fuel Tax Law provides as follows:

"A distributor may make tax free sales of motor fuel, with respect to which he is otherwise required to collect the tax, only as specified in the following items 1 through 7.

...  
...

7. When a sale of dyed diesel fuel is made to someone other than a licensed distributor or a licensed supplier for non-highway purposes and the fuel is (i) delivered from a vehicle designed for the specific purpose of such sales and delivered directly into a stationary bulk storage tank that displays the notice required by Section 4f of this Act, (ii) delivered from a vehicle designed for the specific purpose of such sales and delivered directly into the fuel supply tanks of non-highway vehicles that are not required to be registered for highway use, or (iii) dispensed from a dyed diesel fuel dispensing facility that has withdrawal facilities that are not readily accessible to and are not capable of dispensing dyed diesel fuel into the fuel supply tank of a motor vehicle.

A specific notation is required on the invoice or sales slip covering such sales, and any supporting documentation that may be required by the Department must be obtained by the distributor. The distributor shall obtain and keep the supporting documentation in such form as the Department may require by rule.

For purposes of this item 7, a dyed diesel fuel dispensing facility is considered to have withdrawal facilities that are "not readily accessible to and not capable of dispensing dyed diesel fuel into the fuel supply tank of a motor vehicle" only if the dyed diesel fuel is delivered from: (i) a dispenser hose that is short enough so that it will not reach the fuel supply tank of a motor vehicle or (ii) a dispenser that is enclosed by a

fence or other physical barrier so that a vehicle cannot pull alongside the dispenser to permit fueling. 35 ICLS 505/6.

Section 4f of the Motor Fuel Tax Law, referenced above, provides that “[a] legible and conspicuous notice stating "Dyed Diesel Fuel, Non-taxable Use Only" must appear on all containers, storage tanks, or facilities used to store or distribute dyed diesel fuel.” 35 ILCS 505/4f.

Department records indicate that COMPANY A is registered as a Motor Fuel Distributor. Based on the facts presented in this letter ruling request, it is the Department’s position that when COMPANY A sells dyed diesel fuel to COMPANY B, an unlicensed party, and COMPANY A delivers the dyed diesel fuel to COMPANY B’s customers in Illinois, from a vehicle designed for the specific purpose of such sales, either (i) directly into stationary bulk storage tanks that bear the notice “Dyed Diesel Fuel, Non-taxable Use Only” or (ii) directly into the fuel supply tanks of off-highway vehicles, it meets the requirements for making a tax free sale of motor fuel found in Section 6, item 7 of the Motor Fuel Tax Law (35 ILCS 505/6(7)).

It is important to note that this ruling does not address prior established liabilities and applies only prospectively and only to the facts as described in this letter. In addition, in order for the sale to be made tax-free, all requirements of the statute must be met. In particular, the statute provides that a specific notation is required on the invoice or sales slip covering such sales, and any supporting documentation that may be required by the Department must be obtained by the distributor. The distributor shall obtain and keep the supporting documentation in such form as the Department may require by rule. (35 ILCS 505/6(7)) The rules further provide that for each such sale of dyed diesel fuel, a specific notation of the nature of the exemption must be made on the invoice for these sales. The seller must retain the invoice number and date, name of carrier, bill of lading/manifest number, name and address of purchaser, Illinois origin, Illinois destination, and invoiced gallons sold. A legible and conspicuous notice stating "Dyed Diesel Fuel, Non-taxable Use Only, Penalty For Taxable Use" must appear on all shipping papers (including delivery tickets or manifests and excluding material safety data sheets), bills of lading, and invoices accompanying any sale of dyed diesel fuel (see 86 Ill. Adm. Code 500.210(g)). In cases, as described in this letter request, where the dyed diesel is delivered to someone other than the purchaser, the name and address of the delivery recipient must also be retained. In the event that the conditions for making a tax-free sale as described above are not met, the Department will assess the distributor for the Motor Fuel Tax. It is also important to note that, under the Motor Fuel Tax Law, no one may distribute motor fuel in Illinois without a motor fuel distributor’s or supplier’s license, as appropriate.

Please note that, although dyed diesel fuel may be purchased free of Motor Fuel Tax as described above, it remains subject to Retailers’ Occupation Tax and Use Tax. However, 100% biodiesel and certain biodiesel blends are exempt from Retailers’ Occupation Tax and Use Tax. 35 ILCS 120/2-10; 35 ILCS 105/3-10.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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,

Richard S. Wolters  
Chairman, Private Letter Ruling Committee

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