

This letter explains that prepaid sales tax is not required to be collected by a distributor when it makes sales to a person who does not incur Retailers' Occupation Tax liability on any of its sales of motor fuel. (This is a GIL.)

January 23, 2009

Dear Xxxxx:

This letter is in response to your letter dated June 25, 2008, 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:

I am requesting a Private Letter Ruling to allow an exemption of payment to ABC Companies Suppliers for the Illinois Prepaid Sales Taxes on all recognized Gasoline and Diesel Fuel products. The Illinois law states that Motor fuel distributors must collect 'prepaid sales tax' on the motor fuel sold for resale to a retailer who is not an Illinois licensed motor fuel distributor or supplier. Therefore I have been required to pay the Prepaid Sales Taxes on the facts as listed below.

Purchasing Facts:

ABC Companies is not a licensed distributor or supplier of motor fuel in Illinois.

ABC's suppliers are licensed as motor fuel distributors in Illinois.

ABC's suppliers are charging The Prepaid Sales Tax to ABC on gasoline and diesel products which are purchased.

ABC Companies receives a PST-2 form from their Supplier to apply against the Illinois Sales Tax liability.

Sales Facts:

ABC Companies is not the end-user of the gasoline or diesel fuel.

ABC's customer base consists solely of Retail Customers and State Governments.

ABC Companies charge the Illinois Prepaid Sales Tax to their Retail customers.

ABC Companies exempts the State Government the Prepaid Sales Tax.

ABC Companies issues a PST-2 form to their Retail Customers.

Illinois Prepaid Sales Tax Return Filing Facts:

ABC Companies must pay the State of Illinois Prepaid Sales Taxes billed to customers on PST-2.

ABC cannot offset the Prepaid Sales Tax Paid to Suppliers with the Prepaid Sales Tax Billed to customers and remit the net amount (if any).

Illinois Sales Tax Return Filing Facts:

ABC then files an Illinois Sales Tax Return and is to apply the PST-2's received from the Supplier to offset a liability.

ABC does not have any customers in Illinois who are end-users and subject to Illinois Sales taxes. Therefore a credit balance is applied to ABC's account monthly.

Please note the request for this Letter Ruling is due to the fact that ABC Companies account with the state has a large credit balance to which no monies have been received, yet requested to date. Additionally, if a private letter ruling allows me the exemption of tax payments to the Suppliers, what can be provided to my suppliers to exempt the tax?

If you have any further questions or need additional information, please contact me.

DEPARTMENT'S RESPONSE:

The Department is unable to respond to the matters in your letter. Your letter contains a number of conflicting and confusing statements which make a response impossible. For instance, your letter indicates that ABC is a retailer making sales to "retail" customers in Illinois, including sales to state governments. At the same time, your letter states that ABC does not "have any customers in Illinois who are end-users and subject to Illinois Sales taxes." These statements are confusing to the point that we are unable to adequately ascertain the transactions in your letter. Situations involving the payment of prepaid sales tax on motor fuel are extremely fact dependent and must be clearly delineated in order to determine the responsibilities of each party. In addition, upon further review of your tax records, it appears that some of the representations in your letter are not accurate. For all of these reasons, we are unable to issue a ruling upon the information provided. We urge you to review the letter rulings regarding prepayment of motor fuel that have been posted on our website, as well as administrative regulations governing prepaid sales tax on motor fuel. See, for example, regulations at 86 Ill. Adm. Code 130.551.

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,

Jerilynn G. Troxell
Deputy General Counsel – Sales and Excise Taxes

JGT:msk