

Under the Service Occupation Tax, servicemen are taxed on tangible personal property transferred incident to a sale of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

June 4, 2009

Dear Xxxxx:

This letter is in response to your undated letter, 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 recently requested some information concerning a sales tax issue. I greatly appreciate the response that was given; however, the response does not adequately answer our particular situation. As per your email, can you please send me a binding response to our particular situation – listed below?

- Can you please verify that the following situation is a taxable or nontaxable situation:
Our company provides emergency fueling services to our customers (pumping fuel in vehicles, stand alone tanks-which are rented from us and equipment). We invoice our customers by the hour for the vehicles, tanks, and the labor (stating rental of equipment and labor this may, also, includes logistical fees, support fees, etc). We do sell the fuel (**in conjunction with the services**) that is pumped into the vehicles. Can this be a situation where the equipment with the labor is non taxable even though it is associated with the **sale of taxable tangible property** (fuel & rental of tanks/equipment) or can this be a taxable service?

Your help in this matter will be greatly appreciated. If you have any questions, please don't hesitate to contact me.

DEPARTMENT’S RESPONSE:

It is difficult to answer your question without first knowing whether the “logistical fees, support fees, etc.”) are considered part of the delivery charges or a special service fee akin to installation (and especially what exactly “etc.” encompasses). Moreover, it is difficult to provide good guidance because we do not know all the services being provided, or whether “pumping fuel” is the only service being provided. We hope, though, that the following is helpful.

If the “logistical fees, support fees, etc.” are actually part of the charges for delivering the fuel to the vehicles, stand alone tanks, and equipment you rent to your customers, they are considered part of the selling price of the fuel and therefore taxable, unless there is documentation that the seller and buyer have agreed upon these charges separately from the selling price of the fuel. See the Department’s regulation at 86 Ill. Adm. Code 130.415, which can be found on the Department’s website. Documentation to substantiate such an agreement would consist of either a separate contract or documentation that demonstrates the purchaser had the option of taking delivery of the property at the seller’s location for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertainable or ascertained delivery charge. Separate itemization on an invoice is insufficient to show a separate agreement.

If, however, the charge is not part of a delivery charge, but is a separate service charge, different rules apply. As with delivery charges, special service charges are considered part of the selling price of the property sold unless there is evidence that the seller and buyer have agreed upon these charges separately from the selling price of the property sold. See the Department’s regulation at 86 Ill. Adm. Code 130.450, which can be found on the Department’s website. Documentation of a separate agreement includes a separate contract or an itemized invoice listing the service charge which is signed or initialized by the buyer.

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

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