ST 18-0014-GIL 04/09/2018 PREPAID SALES TAX

This letter describes the manner in which prepaid sales tax on motor fuel is collected and remitted. See 35 ILCS 120/2d. (This is a GIL.)

April 9, 2018

Re: COMPANY
Reseller #####

Dear Xxxxx:

This letter is in response to your letter dated October 11, 2017, 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 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 spoke with Nick from the IL Department of Revenue ##### regarding this matter. He stated we needed to send this letter requesting the following information. We are in need of something in writing which shows that certificate of resale exempts us from prepaid sales tax. If it does not, we need to know how we can get credits for prepaid sales tax from when we purchased gasoline or we need a refund in the amount of $$$. It was not allowed on the PST-1.
>
> If you have any questions or need to discuss this matter further, please contact me.

DEPARTMENT'S RESPONSE:

We are unable to issue specific guidance based on the limited information you provided. However, we offer the following information.

PREPAID SALES TAX

Provisions regarding prepayment of sales tax on motor fuel are contained in Section 2d of the Retailers' Occupation Tax Act, which provides, in part, that

> "[a]ny person engaged in the business of selling motor fuel at retail, as defined in the Motor Fuel Tax Law, and who is not a licensed distributor or supplier, as defined in the Motor Fuel Tax Law, shall prepay to his or her distributor, supplier, or other reseller of motor fuel a portion of the tax imposed under this Act if the distributor, supplier, or other reseller of motor fuel is registered under Section 2a or Section 2c of this Act." 35 ILCS 120/2d

The distributor, supplier, or other reseller then remits to the Department the prepaid sales tax collected using Form PST-1. As indicated on the Form PST-1 instructions, if you are engaged in the business of selling motor fuel to retailers, you must file Form PST-1 and pay the tax you have collected. You must attach to your Form PST-1 a copy of Form PST-2, Statement of Tax Paid, for each sale you made to a motor fuel retailer during the liability period. Form PST-2 is a four-part form, which allows the Department to verify that the information reported by retailers and resellers matches. The retailer is required to file Copy A with Form ST-1 and keep Copy B as a file copy. The reseller is required to file Copy C with Form PST-1 and keep Copy D as a file copy.

You asked whether a certificate of resale exempts you from prepaid sales tax. If a person is registered under Section 2c of the Retailers' Occupation Tax Act as exclusively a reseller of tangible personal property and, in fact, all of that person's sales are not taxable under the Retailers' Occupation Tax Act, then no prepaid sales tax is owed. If, however, a person is registered under Section 2a of the Retailers' Occupation Tax Act as a retailer and makes retail sales of motor fuel, then that person must pay prepaid sales tax to his or her supplier, unless the retailer is also licensed as a motor fuel distributor or supplier.

CLAIMS FOR CREDIT OR REFUND

Section 2d of the Retailers' Occupation Tax Act provides that "[a]ny person engaged in the business of selling motor fuel at retail shall be entitled to a credit against tax due under this Act in an amount equal to the tax paid to the distributor, supplier, or other reseller." See 35 ILCS 120/2d.

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. No credit shall be given the taxpayer unless the taxpayer shows that he or she has borne the burden of the tax or has unconditionally repaid the amount of the tax to the vendee from whom it was collected. See 86 Ill. Adm. Code 130.1501. The claims for credit must be prepared and filed upon forms provided by the Department containing the information listed in part (b) of Section 130.1501.

The statute of limitations for filing a claim for credit is described in part (a)(4) of Section 130.1501. The language is somewhat confusing but, boiled down, it means that the statute of limitations is 3 to 3 1/2 years and expires in 6 month blocks. For example, on July 1, 2018, the statute of limitations expires for claims to recover taxes that were erroneously paid in the first 6 months of 2015. Since the statute of limitations is based upon when the tax was erroneously paid and not when a return was filed, the filing of an amended return will not affect the statute of limitations.

The taxpayer should keep a copy of the claim for credit and any supporting documentation on file that evidences the basis for the claim and that the taxpayer bore the burden of the tax or has unconditionally repaid the amount of the tax to the vendee from whom it was collected.

If the credit at issue has already been established and the taxpayer wishes to convert the credit to a request for a refund, the taxpayer must file Form ST-6, Claim for Sales and Use Tax Overpayment/Request for Action on a Credit Memorandum.

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,

Samuel J. Moore
Associate Counsel

SJM:bkl