IT 14-0009 GIL 9/17/2014 Credits – Replacement Tax Investment
Taxpayer providing alarm monitoring services is not a retailer entitled to claim the replacement tax investment credit.

September 17, 2014

Re: Request for General Information Letter – IL Replacement Tax Credit

Dear Xxxx:

This is in response to your letter dated September 24, 2013 [the letter I received today is dated April 23, 2014] in which you request a ruling whether certain equipment placed into service by COMPANY meets the criterion for being "qualified property" under 35 ILCS 5/201(e). Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). 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 against the Department, but only as to the taxpayer issued the ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of Department policy that apply, interpret or prescribe the tax laws and are not binding against the Department. See 2 Ill. Adm. Code 100.1200(b) and (c).

Your letter states as follows:

> We are requesting guidance in the form of a General Information Letter regarding eligibility for the Illinois Replacement Tax Credit for taxpayers in the business of providing alarm monitoring services. At the time of sale, equipment is permanently placed in the purchaser's place of business or residence. While ownership of the equipment remains with the taxpayer, the substance of the transaction is the transfer of tangible personal property under a lease-type arrangement. Also at the time of sale, a service contract is entered into between the taxpayer and the purchaser. The service contract provides for monthly payments for alarm monitoring services for the duration of the agreement. Upon termination of the service contract, the equipment remains at the location of the purchaser but is disabled until another contract is commenced, either by the same purchaser or the next owner/lessee of the property location.
>
> Under these circumstances, will the Illinois taxpayer be considered a retailer and therefore qualify for the Illinois Replacement Tax Credit allowed under ILCS §5/201(e)?

RULING

Section 201(e) of the Illinois Income Tax Act ("IITA" 35 ILCS 5/201(e)) defines the qualified property eligible for a credit against the Personal Property Tax Replacement Income Tax as follows:

> (1) A taxpayer shall be allowed a credit equal to .5% of the basis of qualified property placed in service during the taxable year …
>
> (2) The term "qualified property" means property which:

(A) is tangible, whether new or used, including buildings and structural components of buildings and signs that are real property…
(B) is depreciable pursuant to Section 167 of the Internal Revenue Code,
(C) is acquired by purchase
(D) is used in Illinois by a taxpayer who is primarily engaged in manufacturing, or in mining coal or fluorite, or in retailing, or was placed in service on or after July 1, 2006 in a River Edge Redevelopment Zone established pursuant to the River Edge Redevelopment Zone Act; and
(E) has not previously been used in Illinois in such a manner and by such a person as would qualify for the credit provided by this subsection (e) or subsection (f).

(3) ….For purposes of this subsection (e), the term "retailing" means the sale of tangible personal property for use or consumption and not for resale, or services rendered in conjunction with the sale of tangible personal property for use or consumption and not for resale. For purposes of this subsection (e), "tangible personal property" has the same meaning as when that term is used in the Retailers' Occupation Tax Act, and, for taxable years ending after December 31, 2008, does not include the generation, transmission, or distribution of electricity.

Your letter does not provide enough information for a determination as to whether COMPANY would qualify for the Illinois replacement tax investment credit.

As pointed out in Section 201(e)(3) above, a determination is needed as to whether COMPANY is primarily engaged in the business of selling tangible personal property or primarily engaged in the sale of services.

In order to determine whether a taxpayer is primarily engaged in an activity, the department must take into account all of the business operations in which the taxpayer engages. This is further described in 86 Il.Admin.Code Section 100.2101(f) which states:

f) To qualify for the credit, property must be used in Illinois by a taxpayer who is primarily engaged in manufacturing, or in mining coal or fluorite, or in retailing. It is not required that the property be used exclusively in manufacturing, mining of coal or fluorite or in retailing. So long as the taxpayer is primarily, more than 50%, engaged in one of these operations, all qualified property is eligible for the credit, even if the property is not actually used in an exempt manufacturing, coal or fluorite mining or retailing process. The taxpayer must engage primarily in one or more of the operations. In other words, a taxpayer that is engaged 30% of the time in retailing and 40% of the time in manufacturing will qualify for the credit, because the taxpayer is engaged primarily in one or more of the operations. In determining whether a taxpayer is primarily engaged in an activity the Department will look to the gross receipts of the taxpayer received in the ordinary course of business by that taxpayer. For example, if more than 50% of the taxpayer's gross receipts are from manufacturing, the taxpayer is primarily engaged in manufacturing, or if more than 50% of the gross receipts are from retailing, the taxpayer is primarily engaged in retailing. The taxpayer (and the Department) will look to the gross receipts received by the taxpayer in the ordinary course of business. Therefore, if, for example, the taxpayer suffers a casualty loss and that is compensated for by an insurance payment, the amount of money so received will not be deemed gross receipts received in the ordinary course of business, and disqualify the taxpayer from eligibility and perhaps result in the recapture of credits granted in prior years.

In order to qualify for the credit, COMPANY must primarily be involved in retailing of alarm equipment, defined by 35 ILCS 5/20(e)(3) as follows:

> (T)he term "retailing" means the sale of tangible personal property for use or consumption and not for resale, or services rendered in conjunction with the sale of tangible personal property for use or consumption and not for resale.

The Illinois Retailers' Occupation Tax Act (35 ILCS 120/1) defines Sale at retail as follows:

> Sec. 1. Definitions. "Sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent to which it is resold as an ingredient of an intentionally produced product or byproduct of manufacturing.

In Illinois, lessors of tangible personal property are deemed to be the end-users of such property. Please refer to 86 Ill. Adm. Code 130.101, 130.220 and 130.2010. If COMPANY leases the equipment to its customers, it is the end-user of the equipment and is not selling the equipment at retail.

Accordingly, if the only gross receipts of the taxpayer are from providing security services and leasing equipment, the equipment identified in your request does not qualify for the credits defined by 35 ILCS 5/201(e) because none of its gross receipts would be from sales of tangible personal property. However, your request does not include enough information to make the determination of whether or not than 50% of the taxpayer's gross receipts are from sales of tangible personal property.

Sincerely,

Matthew Crain
Associate Counsel (Income Tax)