

This letter discusses the requirements for Certificates of Resale. See 5 ILCS 175/5-120 and 86 Ill. Adm. Code 130.1405. (This is a GIL.)

February 25, 2010

Dear Xxxxx:

This letter is in response to your letter dated January 6, 2010, 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](http://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:

COMPANY is in the process of integrating a new software that enables our stores to utilize a streamlined approach to obtaining Resale and Tax Exemption Certificates. Before we complete the process, we want to make sure that we stay within the guidelines and the laws of your state.

Please respond to the following questions via email at your earliest convenience:

**1. Is electronic acknowledgement of intent to resell product, or eligibility of sales tax exemption acceptable?**

Our customers would not physically complete a handwritten certificate of sales tax exemption, but complete an application on-line and check a box acknowledging their eligibility for resale or sales tax exemption and provide us with their tax identification number, name, address, etc.

**2. If electronic acknowledgement of intent to resell product, or eligibility of sales tax exemption is NOT acceptable, is electronic signature capture acceptable in completion of an on-line form?**

Our customers would complete a form by typing the information into a state mandated form, then use a commonly used electronic signature capture (similar to those used in

most department stores) to acknowledge their eligibility for resale or sales tax exemption.

Both versions of this form would be electronically stored and would greatly reduce our paper use, as well as the chance of fraud.

If you have any questions, please feel free to contact me. Your assistance is greatly appreciated.

## **DEPARTMENT'S RESPONSE:**

We are unable to provide you with the specific response you request in the context of a General Information Letter. Provided below is information that we hope you find helpful regarding your resale/ exemption certificate.

For general information regarding resale certificates, the Department's regulation for resale certificates, "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale," is found at 86 Ill. Adm. Code 130.1405. If an electronic resale certificate is kept, it should contain all of the information required under 86 Ill. Adm. Code 130.1405.

A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. In addition to the statement, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certification of Resale to out-of-State Purchaser.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (*i.e.*, it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided the above stated conditions are met. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois. The risk run by companies in accepting such a certification and the risk run by purchasers in providing such a certification is that an Illinois auditor is more likely to go behind a certificate of resale that does not contain a signature and

require that more information be provided as evidence that the particular sale was, in fact, a sale for resale.

An electronic resale certificate should contain all of the information required by 86 Ill. Adm. Code 130.1405. We do not believe a process that simply requires a click of a button is sufficient to meet the signature requirement contained in Section 130.1405(b)(4). If a signature is not obtained in accordance with the Department's rules, a sale is presumed to be a sale at retail. However, a digital signature may be acceptable. As explained above, the law allows the Department to look at other evidence in determining the sufficiency of a certificate of resale.

I hope this information is helpful. If you require additional information, 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  
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