

Fuel and petroleum products sold to or used by an air common carrier, certified by the carrier to be used for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight destined for or returning from a location or locations outside the United States without regard to previous or subsequent domestic stopovers is exempt from Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.321. (This is a GIL.)

May 5, 2010

Dear Xxxxx:

This letter is in response to your letter dated March 9, 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 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 a non-income tax consulting company. Among our clients are a number of airlines, so we frequently seek clarification of state statutes and regulations that could affect our clients' non-income tax obligations.

An exemption from the retailers' occupation tax for fuel and petroleum products sold to or used by an air common carrier in the conduct of its business as an air common carrier for a flight destined for or returning from a location outside the United States is provided in 35 ILCS 105/3-5(12). The exemption is reiterated in 86 Ill. Adm. Code 130.321.

My question is whether a possession of the United States is considered a 'location outside the United States' for the purpose of this exemption.

For comparison, I refer you to 26 USC, section 4221. This statute exempts from the federal excise tax purchases of fuel used in foreign trade or trade between the United States and any of its possessions. Although the federal statute specifically mentions U.S. possessions and the Illinois statute does not, it seems reasonable to assume that a location outside the United States would include a U.S. possession.

DEPARTMENT'S RESPONSE:

Although we cannot give you a specific answer in the form of a General Information Letter, we hope you find the following helpful.

Notwithstanding the fact that sales may be at retail, "fuel and petroleum products sold to or used by an air carrier, certified by the carrier to be used for consumption, shipment, or storage in the conduct of its business as an air common carrier, for a flight destined for or returning from a location or locations outside the United States without regard to previous or subsequent domestic stopovers" is exempt from Retailers' Occupation Tax. 35 ILCS 120/2-5(22); 86 Ill. Adm. Code 130.321(a) (emphasis added). For purposes of the exemption, an air carrier means a commercial air common carrier certified and authorized to conduct international flights involving passengers or cargo for hire, on a regularly-scheduled basis. See Section 130.321(b).

As you can see, in order to be eligible for this exemption, a flight has to be destined for or returning from a location or locations outside the United States. A possession of the United States is not considered a location outside the United States. As such, for example, a flight originating in Los Angeles, destined for Guam with a stopover in Hawaii would not be considered an international flight for purposes of this exemption.

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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