

An item that is exempt from the State Retailers' Occupation Tax or Service Occupation Tax as a sale for resale, is also exempt from the tax imposed under the County School Facility Occupation Tax Law as a sale for resale. See 86 Ill. Adm. Code 130.210(c). (This is a GIL.)

July 29, 2010

Dear Xxxxx:

This letter is in response to your letters dated April 29, 2010 and May 28, 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 of April 29, 2010 you have stated and made inquiry as follows:

The BOARD is discussing the imposition of a one-percent sales tax under the authority of the enclosed statute, 55 ILCS 5/5-1006.7, for school facility occupation taxes.

The oil producers in that county are concerned about subsection (e) which may impose a tax upon them when the oil is delivered for sale within the State of Illinois. We need a legal opinion as to whether this tax will apply to oil producers in COUNTY. Your assistance will be greatly appreciated.

In your letter of May 28, 2010 you have stated as follows:

The BOARD has imposed of [sic] a one-percent sales tax under the authority of the enclosed statute, 55 ILCS 5/5-1006.7, for school facility occupation taxes. It is my position that oil producers would not be subject to this tax pursuant to the statute. Following is my reasoning:

The statute lists 'coal or other mineral mined in Illinois' as subject to the tax, but oil is not considered to be a mineral. The sale of oil at the wholesale level, such as between oil producer and a gas station or refinery would not be subject to this sales tax in that it applies only to transactions that were already being taxed at the 6.25% level, which, as it

relates to oil, would only apply [sic] gas that is sold to consumers at a gas station.

Please advise me as to whether my legal analysis is correct. The BOARD is waiting for an official legal opinion that oil producers are exempt from this tax. As an attorney from the Illinois Dept. of Revenue, you can provide the official legal opinion that they require. Your assistance will be greatly appreciated.

#### **DEPARTMENT'S RESPONSE:**

The County School Facility Occupation Tax Law (55 ILCS 5/5-1006.7) authorizes counties to impose within the county, after referendum approval, (i) a retailers' occupation tax upon all persons engaged in the business of selling tangible personal property, other than personal property titled or registered with an agency of this State's government, at retail in the county on the gross receipts from the sales made in the course of business and (ii) a service occupation tax upon all persons engaged in the county in the business of making sales of service, on the selling price of tangible personal property transferred as an incident to making those sales of service. These taxes are commonly referred to as sales taxes. The tax revenues are to be used exclusively for school facility purposes. The rate of the tax may not exceed 1%.

Validly documented sales for resale are not subject to the County School Facility Occupation Taxes. Wholesale sales of any tangible personal property, including oil, would be exempt as sales for resale as long as properly documented. In practice, any item that is not subject to the State's 6.25% Retailers' Occupation Tax or Service Occupation Tax because it is exempt as a sale for resale or on the basis of some other exemption, is also not subject to the County School Facility Retailers' Occupation or Service Occupation Tax. This is because the exemptions found in the Retailers' Occupation Tax are incorporated by reference into the County School Facility Occupation Tax Law. (See 55 ILCS 5/1-1006.7(a))

Please keep in mind that sales for resale cannot be made tax-free unless the purchaser (except in the case of an out-of-State purchaser who will always resell and deliver the property to his customers outside Illinois) has an active registration number or active resale number from the Department and gives such number to suppliers in connection with certifying to any supplier that any sale to such purchaser is nontaxable because of being a sale for resale. 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 (See 89 Ill. Adm. Code 130.210(c)).

The language in subsection (e) of the County School Facility Occupation Tax Law dealing with sales of coal or another mineral mined in Illinois does not address whether these items are subject to tax, but rather, how to situs the sale of these items in situations when they are subject to tax under this Law. Note that this subsection addresses "retail" sales of these items. As a result, this language does not apply to items that are sold for resale.

Any item, including oil, that is exempt from the State Retailers' Occupation Tax or Service Occupation Tax as a sale for resale, is also exempt from the tax imposed under the County School Facility Occupation Tax Law as a sale for 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.

Sincerely,

Samuel J. Moore  
Associate Counsel