

Illinois allows a credit against Illinois Use Tax liability for tax that has been properly paid to another State. See 86 Ill. Adm. Code 150.310(a)(3). (This is a GIL.)

December 27, 2010

Dear Xxxxx:

This letter is in response to your letter dated January 14, 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:

I represent COMPANY, a STATE Corporation. The business sells campers, trailers, and vehicle accessories. A number of the trailers that were sold were purchased by Illinois residents; my client did not collect sales tax on these transactions, and the Illinois residents paid the tax on these trailers when they were registered in the State of Illinois.

The STATE Department of Revenue is conducting an audit of my client for the years 2004 through 2007, and has advised that my client was required to collect STATE sales tax on these sales. Please contact me to explain the process for requesting a refund of these vehicle sales/use taxes, so that my client can forward these proceeds to the STATE Department of Revenue. Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

Please be advised that when a person registers or titles a vehicle in Illinois, Illinois Use Tax is due. The Use Tax is imposed on the privilege of using in this State tangible personal property purchased anywhere at retail from a retailer, 35 ILCS 105/3. By registering a trailer in Illinois, a person exercises a power over it in Illinois that constitutes a "use" under the provisions of the Use Tax Act, 35 ILCS 105/1 et seq., and Illinois Use Tax is properly due.

Illinois allows a credit to taxpayers against their Illinois Use Tax liability when they have already paid sales tax on tangible personal property that was properly due to another State. This credit is only allowed for tax and cannot apply to any interest or penalty paid to another State.

“To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

.....
.....

(d) The use, in this State, of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has **already paid** a tax in another State in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other State.” (35 ILCS 105/3-55(d), emphasis added)

If, however, no tax has been paid to another State at the time a person pays Use Tax to Illinois, there is no statutory basis for a credit or refund of Illinois Use Tax.

If tax was properly due and had already been paid to another state at the time a person paid Use Tax to Illinois, a claim for credit or refund is available when the person shows that he paid tax to the Department as a result of a mistake of fact or law. Even in that case, though, only the remitter of the tax erroneously paid to the Department would be authorized to obtain a credit or refund (your customer in this case). See 86 Ill. Adm. Code 150.1401(a).

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.

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:mks