

A distributor of cigarettes in this State within the meaning of the first definition of “distributor” in Section 1 of Cigarette Tax Act possessing a license under Section 4 of the Act may make retail sales of cigarettes. See 35 ILCS 130/2, 3 and 4b. (This is a GIL.)

September 6, 2011

Dear Xxxxx:

This letter is in response to your letter dated June 29, 2011, 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:

We are writing to get an opinion as to whether or not we can sell cigarette and tobacco products at retail. We have an Illinois sales tax license. We sell products to our employees and customers that are taxable.

It looks like according to information we received from the State that we can not [sic] sell cigarettes at retail, but we can sell other tobacco products. Attached are some emails we received when asking this question. We want to assure compliance with all State of Illinois laws, rules and regulations.

If the opinion is no we cannot, please let us know what license is required to do so.

Thank you for your help with this matter.

DEPARTMENT’S RESPONSE:

The Cigarette Tax Act requires distributors to collect the cigarette tax from retailers at or before the time of the sale, affix tax stamps, and remit the tax collected from retailers to the Department. The amount of the Cigarette Tax imposed by the Act must be separately stated, apart from the price of the goods, by distributors and retailers, in all bills and sales invoices. 35 ILCS 130/2.

Prior to shipment to an Illinois retailer, a stamp must be applied to each original package of cigarettes sold to the retailer. A licensed distributor may transport unstamped original packages of cigarettes to a facility, wherever located, owned or controlled by such distributor; however, a distributor may not transport unstamped original packages of cigarettes to a facility where retail sales of cigarettes take place. 35 ILCS 130/3.

In-state manufacturers licensed as distributors under Section 4 of the Act and out-of-State manufacturers holding permits under Section 4b of this Act may not sell original packages of cigarettes to retailers. A retailer may sell only original packages of cigarettes obtained from licensed secondary distributors or licensed distributors other than in-state manufacturers licensed as distributors under Section 4 of the Act and out-of-State manufacturers holding permits under Section 4b of the Act. 35 ILCS 130/4d.

A distributor of cigarettes in this State within the meaning of the first definition of “distributor” in Section 1 of Cigarette Tax Act possessing a license under Section 4 of the Act may make retail sales of cigarettes. If a distributor makes retail sales of cigarettes, the distributor must comply with all requirements in the Act regarding purchase and sales of cigarettes by distributors and retailers. For example, a location from which retail sales are made by the distributor may not have unstamped packages of cigarettes at the location.

Distributors making retail sales of cigarettes must also register under the Retailers’ Occupation Tax Act, collect the Retailers’ Occupation Tax, remit the tax and file returns with the Department.

The Tobacco Products Tax Act of 1995 contains a number of categories of “distributor” for purposes of administering the Tobacco Products Tax Act. The first paragraph of the definition states that a “distributor” means “[a]ny manufacturer or wholesaler in this State engaged in the business of selling tobacco products who sells, exchanges, or distributes tobacco products to retailers or consumers in this State. 35 ILCS 143/10-5 (emphasis added). The second paragraph of the definition states that a “distributor” means “[a]ny manufacturer or wholesaler engaged in the business of selling tobacco products from without this State who sells, exchanges, distributes, ships, or transports tobacco products to retailers or consumers located in this State, ...” *Id.* (emphasis added). The Act also requires distributors to remit the tax to the Department on sales of tobacco products made directly to consumers. 35 ILCS 143/10-10.

Based on language contained in the Tobacco Products Tax Act, distributors may make retail sales of tobacco products to employees and customers.

Distributors making retail sales of tobacco products must also register under the Retailers’ Occupation Tax Act, collect the Retailers’ Occupation Tax, remit the tax and file returns with the Department.

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,

Richard S. Wolters
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