

This letter concerns cigarette distributors that make retail sales of cigarettes. See 35 ILCS 130/2, 3 and 4b. (This is a GIL.)

October 17, 2011

Dear Xxxxx:

This letter is in response to your letter dated August 12, 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:

COMPANY respectfully requests a Private Letter Ruling regarding COMPANY's ability to sell cigarettes to end-users as a holder of primary cigarette distributor licenses.

Currently, COMPANY has six locations that have a primary cigarette distributor license in the State of Illinois. Please see the attached list. These locations affix tax stamps to cigarettes. Accordingly, a primary cigarette distributor license is necessary as defined in 86 Illinois Administrative Code 440.5. However, these locations also act as a retailer because they sell stamped cigarettes to end-users.

Based on our understanding, a primary cigarette distributor cannot sell to end-users unless granted special permission by the Illinois Department of Revenue.

Therefore, COMPANY respectfully requests permission by the Illinois Department of Revenue to allow the six COMPANY locations on the attached list to be able to sell stamped cigarettes to end-users.

Thank you for your time and consideration regarding this request. Please feel free to contact me if you have any questions or concerns. I look forward to hearing from you soon.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department declines to issue a Private Letter Ruling. Although we are not providing you with a Private Letter Ruling, we hope the following general information will be of assistance.

Cigarette Tax Act

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, regardless of whether the distributor intends to subsequently place stamps on such packages of cigarettes.

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.

Other Tobacco Products

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
Associate Counsel

RSW:msk