

This letter discusses the requirements of refund claims for taxes paid on fuel which was used for nontaxable purposes. (This is a GIL.)

December 29, 2011

Dear Xxxxx:

This letter is in response to your letter received by the Department on November 21, 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 is in the process of testing GPS vendors for its fleet of power units. The operational improvements that can be achieved with these technologies are vast. COMPANY plans to fit the entire fleet with the vendor of choice within the next two years.

In order to approximate the return on investment of each vendor, COMPANY needs to find out if fuel burned off highway is subject to motor fuel tax. With one vendor in particular, COMPANY will have the capability of tracking the units as they arrive at an off road location. Whether it be waiting to load or unload the truck, or traveling down an unpaved dirt road to reach final destinations, the GPS can track time spent, miles traveled and fuel burned within a particular geofence. **(See the attachment)**

Geofences can encompass each and every COMPANY customer location. The units do travel by highway to get from one customer location to the next, but the fuel consumed within the geofence is not used on highway. I am requesting a private letter ruling that states fuel burned within a geofence is not and should not be subject to motor fuel tax in the state of Illinois.

COMPANY is mindful of the increasing fuel prices and will comply with the rebate application process associated with off road fuel.

Thank you for your attention to this matter.

DEPARTMENT'S RESPONSE:

We are unable to issue the ruling which you request. Claims for refund are governed by Section 13 of the Motor Fuel Tax Law (Law) and Section 500.235 of the Department's regulations. We cannot issue blanket approval for refunds of all fuel used inside a geofence. The Department will not approve claims unless they are sufficiently documented by verifiable proof. Section 500.235 details the information required to support a claim. Your letter does not indicate whether the fuel for which the claim will be made is diesel fuel or gasoline. Eligibility for claims for each type of fuel are slightly different. I hope that the following information is helpful.

Section 13 of the Motor Fuel Tax Law ("Law"), 35 ILCS 505/13, provides that any person other than a distributor or supplier who uses motor fuel (upon which he has paid the amount required under Section 2 of the Law) for any purpose other than operating a motor vehicle upon the public highways or water shall be reimbursed and repaid the amount so paid. Claims for reimbursement must be made to the Department on forms provided by the Department, and must include documentation related to the purchase of the fuel, along with additional information deemed necessary by the Department regarding the specific purpose for which it was used. The specific information required of claimants is found at Section 500.235 of the Department's regulations. As Section 500.235 notes, the Department will approve claims only when they are based upon a showing that motor fuel was used for a nontaxable purpose and that the part for which refund is claimed can, as a practical matter, be calculated and itemized. Only claims that are supported by proof of the amount of motor fuel not used for a taxable purpose will be approved. See Section 500.235 (i).

Claims for refunds of tax paid on the purchase of undyed diesel fuel are authorized in only limited circumstances. These situations are enumerated in Section 13 of the Law and are more fully detailed in Section 500.235 (j). These provisions, for instance, allow claims for undyed diesel fuel used by a commercial motor vehicle, as defined in Section 500.100, for any purpose other than operating the commercial motor vehicle on the public highways. These claims are authorized only for commercial motor vehicles that are operated for both highway purposes and any purposes other than operating such vehicles upon the public highways and are limited to the nonhighway portion of the fuel used.

Please note that a statute of limitations applies to claims filed with the Department. Section 13 of the Law provides that claims for full reimbursement for taxes paid on or after January 1, 2000 must be filed not later than 2 years after the date on which the tax was paid by the claimant.

The claim used to file for refunds of motor fuel tax can be found on the Department's website at <http://tax.illinois.gov/TaxForms/Misc/Mft/RMFT-11-A.pdf>.

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,

Jerilynn Troxell Gorden
Deputy General Counsel – Sales and Excise Taxes

cc: R. Marr