

This letter discusses claims for credit. See 86 Ill. Adm. Code Sections 130.1501. (This is a GIL.)

June 15, 2012

Dear:

This letter is in response to your letter received May 31, 2012, 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:

This letter pertains to a case of overpaid sales tax by a corrugated container manufacturer, which paid sales tax on exempt items to a pallet supply company. After reviewing purchases made by COMPANY1 from COMPANY2, Inc, we found these items to be exempt from sales tax as per TITLE 86-PART 130-SECTION 130.2070. The pallets contain the tangible personal property manufactured by COMANY1, and upon shipment of the product, the pallets are transferred and retained by COMPANY1's customers. COMPANY2, Inc. has agreed to help recover these funds from the Illinois Department of Revenue, but requested COMPANY1 completes [sic] the research and filing needed to complete the task.

When requesting a credit, or refund of overpaid sales tax via form ST-1-X from the state of Illinois, the company that collected the sales tax (COMPANY2, Inc.) must 'unconditionally' have paid back the entity which overpaid (COMPANY1).

Is an invoiced credit filed (Acct. Payable for COMPANY2, Acct. Rec. for COMPANY1) equivalent in the eyes of the law to an actual cash refund? COMPANY1 would like to minimize the effect of this clerical error on COMPANY2, Inc.'s cash flow by allowing them time to retrieve the money from the State of Illinois before returning the cash to COMPANY1.

I appreciated any attention given to this matter, and please feel free to contact me directly with any questions.

DEPARTMENT'S RESPONSE:

Claims for credit and refunds are available when a taxpayer shows that he or she paid tax to the Department as a result of a mistake of fact or law. See 86 Ill. Adm. Code 130.1501. If a retailer collects and remits to the Department tax on an item that should have been exempt as a sale for resale or under some other exemption, the retailer may file a claim for credit. This is true even if a valid Certificate of Resale or other exemption certificate is provided for items after the initial purchase and after tax has been paid. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a credit. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. The Department cannot approve any claim for credit unless the claimant clearly establishes that he or she has unconditionally repaid the amount of the tax to the person from whom he has collected the tax.

The retailer will be considered to have satisfied the unconditional repayment requirement where it provides its purchaser with an instrument upon which the purchaser can make a demand upon the retailer/claimant for payment of the tax recovered if the claim is allowed. The retailer's provision of unconditional promissory notes or irrevocable credit memoranda to its purchasers who paid tax in error would satisfy this requirement. The purpose of requiring the retailer to make an unconditional repayment to its purchasers is to prevent unjust enrichment on the part of the retailer. Therefore, in order to establish that it was not unjustly enriched, the retailer filing a claim for credit must be able to demonstrate that it gave unconditional promissory notes or irrevocable credit memoranda to its purchasers who paid tax in error to the retailer.

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