

ST 13-0020-GIL 04/30/2013 CIGARETTE TAX

Retailers must obtain cigarettes for sale at retail from licensed distributors. 35 ILCS 130/4d. (This is a GIL.)

April 30, 2013

Dear:

This letter is in response to your letter dated April 2, 2013, 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 currently have a State of Illinois Department of Public Health Salvage Warehouse Store license and will be applying for a Retail License when the need arises [sic]. I am involved in the business of insurance salvage and distressed merchandise.

I have been contacted about an inventory of Stamped Tobacco products that are from a Retail Smoke Shop. I contacted the following agencies that I was referred to:

Illinois Department of Public Health Salvage Division
Alcohol, Tobacco, and Trade Bureau – US Department of Treasury
Illinois Department of Revenue Central Licensing

None of these agencies have a special license that is required for the Retail Sale of Tobacco in Illinois. The Illinois Department of Revenue Central Licensing advised me that I need to contact this office for a final interpretation or instructions.

I appreciate your cooperation in this matter and would appreciate a quick response so that I can proceed with this purchase. Feel free to contact me at 618-303-4000.

DEPARTMENT'S RESPONSE:

The Cigarette Tax Act imposes a tax upon persons engaged in business as a retailer of cigarettes in this State at the rate of \$1.98 per package of 20 cigarettes. See 86 Ill. Adm. Code 440.10. The Cigarette Use Tax Act imposes a tax upon the privilege of using cigarettes in this State at the rate of \$1.98 per package of 20 cigarettes. Payment of the tax shall be evidenced by a stamp affixed to each original package of cigarettes. See 86 Ill. Adm. Code 440.20. The Tax is collected up front from retailers by licensed distributors. It is the duty of each distributor to collect the tax from the retailer at or before the time of sale, to affix the required stamps and to remit the tax collected from

retailers to the Department. Severe penalties may be incurred for noncompliance. See 86 Ill. Adm. Code 440.10.

Further, the taxes imposed under the Cigarette Tax Act are in addition to all other occupation or privilege taxes imposed by the State of Illinois, or by any political subdivision thereof. See 35 ILCS 130/2(c). The Illinois retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Under the Cigarette Tax Act, it is unlawful for any person to engage in the business as a distributor of cigarettes in this State without first having obtained a license or permit from the Department. See 86 Ill. Adm. Code 440.50. Except when the applicant is the manufacturer, no distributor's license shall be issued to an applicant unless he presents the Department with satisfactory proof in writing that he will be able to buy cigarettes directly from at least 3 major cigarette manufacturers. See Section 440.50(a).

There is no requirement that the 3 major cigarette manufacturers do business in the United States. Upon written satisfactory proof from such major cigarette manufacturers, along with a complete application, fee and bond in the amount of \$2,500, the Department will issue such distributor's license. Failure to comply with Department regulations may result in the denial of a cigarette distributor's license.

In addition, each applicant must submit an annual license fee payable to the Department for each distributor's license in the amount of \$250. All licenses issued by the Department under the Cigarette Tax Act are valid for up to one year after issuance unless sooner revoked, canceled, or suspended. The State of Illinois has no minimum pricing laws for the sale of cigarettes.

Nothing in the Cigarette Tax Act prevents you from buying packages of stamped cigarettes from a retailer going out of business. However, you may not sell stamped packages of cigarettes to retailers unless you obtain a distributor's license. Retailers are required by law to acquire cigarettes for retail sale from licensed distributors. 35 ILCS 130/4d. Nothing in the Cigarette Tax Act prevents you from selling stamped packages of cigarettes to licensed distributors.

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