

ST 16-0014-GIL 03/16/16 Gas Revenue Tax

Transactions with customers that are exempt from tax under the Gas Use Tax Law or otherwise incur no tax liability under that Law remain subject to tax under the Gas Revenue Tax Act. 86 Ill. Adm. Code 470.172(b). (This is a GIL.)

March 16, 2016

Dear Xxxxx:

This letter is in response to your letter dated February 23, 2016, 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 am writing as Property Team member of the CHURCH in Springfield, Illinois. The church has a third party supplier of natural gas which is ABC. The natural gas is delivered by UTILITY 1. When the church subscribed to ABC almost three years ago, UTILITY 1 continued to charge the gas use tax on the full amount of therms used by the church. UTILITY 1 changed the gas tax last fall after we learned that the law states that the gas use tax does not apply to the church if the gas is purchased from an out-state supplier. UTILITY 1 then provided a refund to the church for the 2.5 years of charging the gas use tax.

UTILITY 1 continues to charge a gas revenue tax. We contacted UTILITY 1 to discuss. UTILITY 1 states that they are charging 5% tax on its own charges, or 2.4 cents per them, whichever is less. In low usage months, the tax is calculated as 2.4 cents per therm and is the same amount as the gas use tax. In higher usage months the tax is calculated as 5% of the UTILITY 1 charges which is much less that the tax had been previously

based on 2.4 cents per therm. When using the 5% method, UTILITY 1 calculates the tax a 5% of its total bill which consists of

- Customer Charge
- Delivery gas charge
- Rider GER charge
- Rider TBS capacity charge

I spoke with PERSON at the Illinois Department of Revenue last October. He said that an interpretation can be obtained from the legal department of IDOR. Our question is whether UTILITY 1 is correct to charge the gas revenue tax. The IDOR website states that there are six allowable exemptions to the gas use tax. CHURCH meets one of the exemptions namely “used by governmental bodies or entities operated and organized exclusively for charitable, religious, or educational purposes who have been issued a tax exemption identification number by IDOR.” CHURCH is a religious organization that has been issued a tax exemption number by IDOR. It does not seem logical to us that the law specifically states that the church is exempt from the gas use tax and then is charged a different gas tax which is based on the same formula. My interpretation is that the church should not be charged any state gas tax.

We are requesting that you review this situation and provide a response.

DEPARTMENT’S RESPONSE:

Section 2 of the Gas Revenue Tax provides that, on and after October 1, 2003, no tax is imposed under the Gas Revenue Tax (35 ILCS 615) on transactions with customers who *incur a tax liability* under the Gas Use Tax Law (35 ILCS 173). See 86 Ill. Adm. Code 470.172(a). However, transactions with customers that are *exempt from tax* under the Gas Use Tax Law or otherwise incur no tax liability under that Law remain subject to tax under the Gas Revenue Tax Act. 86 Ill. Adm. Code 470.172(b). The Gas Revenue Tax is not imposed on the gas itself but on the delivery of the gas.

“EXAMPLE: A customer is exempt from Gas Use Tax under one of the exemptions provided under Section 5-50 of the Gas Use Tax Law and makes an out-of-State purchase of gas. The customer provides its delivering supplier in Illinois a copy of an exemption certificate as required under 86 Ill. Adm. Code 471.125. The sale of the gas is not subject to Gas Revenue Tax liability; however, the transaction for the transportation of the gas and any related service charges remain subject to tax under this Part at the rate of 2.4 cents per therm or 5% of the gross receipts (whichever is less) for the customer's billing period.”

86 Ill. Adm. Code 470.172(b).

The Gas Revenue Tax is imposed at the rate of 2.4 cents per therm or 5% of the gross receipts (whichever is less) for the customer's billing period. The tax is imposed upon the persons distributing or selling gas for use or consumption but the seller is authorized to obtain reimbursement for its tax liabilities from its customers.

"Gross receipts" means the consideration received for gas distributed, supplied, furnished or sold to persons for use or consumption and not for resale, and for all services (including the transportation or storage of gas for an end-user) rendered in connection therewith, and shall include cash, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service costs, or any other expense whatsoever." 35 ILCS 615/1.

You have indicated that you are exempt from Gas Use Tax on purchases of gas because of your exempt status as a religious entity with an "E" number. However, as the above information explains, UTILITY 1 is properly remitting tax, and collecting reimbursement from you, on the charges to distribute the gas to you.

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:bkl