

The exemption from Retailers' Occupation Tax for sales of biodiesel blends with more than 10% biodiesel includes biodiesel blends with more than 10% but less than 11% biodiesel and, until the Form is changed, may be reported on Form ST-1 under "Other motor fuel deductions." See 35 ILCS 120/2-10. (This is a GIL.)

September 15, 2016

Dear Xxxxx:

This letter is in response to your letter dated February 3, 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:

COMPANY, Illinois Account ID #####, hereby requests a private letter ruling from the Illinois Department of Revenue (Department).

Background

COMPANY is not currently under audit by the Department for the tax in question nor is it involved in litigation on the issue discussed in this letter. To the best of COMPANY's knowledge, the Department has not previously ruled and COMPANY has not previously sought a private letter ruling on this issue.

After conducting research on this issue, COMPANY is of the opinion that Illinois case law, statutes and regulations are not dispositive of the subject of this request. In fact, COMPANY seeks this private letter ruling for clarification on how to properly claim exemptions on Department forms.

COMPANY operates travel centers across the United States including 46 locations within the State of Illinois. At these travel centers, COMPANY sells motor fuel (gasoline and diesel) at its pumps along with a myriad of retail items inside the store. As such,

COMPANY files Form ST-1, Sales and Use Tax and E911 Surcharge Return with the Department on a monthly basis.

COMPANY is the largest seller of over the road diesel in the United States. As biodiesel products have become more prevalent in the marketplace and tax incentives have been created, COMPANY has incorporated those products into its diesel fuel supply chain including within the State of Illinois.

Discussion

ILCS § 120/2-10 [sic] states “the tax imposed by this Act does not apply to the proceeds of sales made on or after July 1, 2003 and or before December 31, 2018” of “biodiesel blends, as defined in the Use Tax Act, with more than 10% but no more than 99% biodiesel.”

Illinois Form ST-1 (rev.09/15), Line 23 states “Biodiesel blend (90-99 percent petroleum-based product).” Line 23a provides a box to include receipts and the calculation to claim the 20% exemption for qualifying receipts. Illinois Form ST-1 (rev. 09/15) states “Biodiesel blend (1-89 percent petroleum-based product).” Line 24a provides a box to include receipts and the calculation to claim the 100% exemption for qualifying receipts.

ILCS § 120/2-10 [sic] clearly states that biodiesel blends of more than 10%, but no more than 99% biodiesel, qualify for a full sales tax exemption. However, Form ST-1 (rev. 9/15), Line 23a and Line 24a do not provide a space to claim certain sales of biodiesel blends of more than 10%, specifically those between 10.1 and 10.9% biodiesel.

Issues

- 1) The plain language of the statute supports a full exemption of sales of biodiesel blends between 10.1 and 10.9% biodiesel from Illinois sales tax. Is COMPANY’s understanding of this exemption correct?
- 2) Assuming COMPANY’s understanding is correct, it is unclear where the 10.1 to 10.9% biodiesel blends should be reported on the current design of Form ST-1. Where should COMPANY claim these exempt sales on the Form ST-1? Should they be claimed in some other manner?
- 3) COMPANY has not historically claimed the full exemption on 10.1 to 10.9% biodiesel blends on its returns. Would COMPANY be entitled to a refund for any Illinois Retailer’s Occupation Tax paid on 10.1 to 10.9% biodiesel blends in open statutory periods with supporting documentation?

Conclusion

COMPANY takes advantage of Illinois’ sales tax incentives located in ILCS § 120/2-10 [sic]. For all open tax periods and several preceding years, COMPANY has claimed the 20% exemption on sales of biodiesel blends between 1% and 10%. During this same

timeframe, COMPANY has only claimed the full exemption on sales of biodiesel blends of 11% or greater.

As indicated in the Department's General Information Letter 07-0057-GIL (06/07/2007), Form ST-1, in a previous format, "does not make any provisions for how to report decimal amounts of fuel in the blend." Further, the GIL states that the form "makes it difficult for the taxpayer to properly calculate the appropriate exemption." These statements are still applicable to the current version of the Form ST-1.

As a result of the text and format of Form ST-1 and informal guidance from the Department, COMPANY to its detriment, has not claimed a full sales tax exemption for those biodiesel blends that are more than 10% biodiesel (10.1 to 10.9 percent biodiesel). COMPANY's interpretation of the exemption statute is reasonable based on the plain language of the statute and should be able to claim the full exemption on all qualifying biodiesel blends which are more than 10% biodiesel.

COMPANY seeks additional guidance from the Department on the appropriate method to claim the full exemption of these biodiesel blends for future periods. Please provide additional information on how COMPANY should properly claim these exempt sales.

Additionally, COMPANY wants to claim all overpayments of tax paid on these biodiesel blends. COMPANY intends to file Form ST-6, Claim for Sales and Use Tax Overpayment for the overpayment of Illinois tax on biodiesel blends between 10.1 to 10.9 percent biodiesel. If an alternative method or expedited procedure is available, please advise COMPANY on the most effective way to claim these overpayments of tax.

Thank you for your consideration of this request. If you should require additional information or have any questions, please contact me at PERSON@COMPANY.COM or #####.

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 recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope however, the following General Information Letter will be helpful in addressing your questions.

Biodiesel blends:

Section 2-10 of the Retailers' Occupation Tax Act (35 ILCS 120/2-10) provides that with respect to biodiesel blends with no less than 1% and no more than 10% biodiesel, the tax applies to 80% of the proceeds of sales made on or before December 31, 2018. With respect to biodiesel blends with more than 10% but no more than 99% biodiesel, the tax does not apply to the proceeds of sales made on or before December 31, 2018. The exemption for biodiesel blends with more than 10% biodiesel includes those blends with more than 10% but less than 11% biodiesel. However, Form ST-1, Schedule A, Section 2, captioned "Motor fuel deductions" does not make any specific

provisions for how to report biodiesel blends with more than 10% but less than 11% biodiesel. The Form also bases the exemption calculation on the percentage of petroleum-based product rather than the percentage of biodiesel included in the blend; i.e., “1-89 percent petroleum based product.” This makes it difficult for the taxpayer to report biodiesel blends with more than 10% but less than 11% biodiesel. Until such time as Form ST-1 is changed to allow for the reporting of all exempt biodiesel blends on one line, taxpayers may report sales of biodiesel blends with more than 10% but less than 11% biodiesel on Line 28 of Schedule A labeled “Other motor fuel deductions,” using the same calculation as provided on Line 25 “Biodiesel blend (1-89 percent petroleum-based product).”

Claim for credit or refund:

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. See 86 Ill. Adm. Code 130.1501. Please note that only persons who have actually paid tax to the Department can file a claim for credit.

No credit shall be given the taxpayer unless the taxpayer shows that he or she has borne the burden of the tax or has unconditionally repaid the amount of the tax to the purchaser from whom it was collected. In other words, if a purchaser has paid tax to a retailer, only that retailer can file a claim for credit. The retailer must first refund tax money paid by the purchaser before proceeding with the claim. Once the retailer has done this, he or she must apply for the credit in the manner described in the regulation. Retailers are not required by law to apply for such credits; rather, this procedure is voluntary. Whether or not the retailer refunds the tax paid and files a claim for credit with the Department is a private matter between the retailer and the purchaser.

Please note that the form ST-6 Claim for Sales and Use Tax Overpayment/Request for Action on a Credit Memorandum, is not the form to use in the situations described in this letter. If a taxpayer pays the amount that was shown due on an original Form ST-1, Sales and Use Tax Return, then the taxpayer must file a corresponding ST-1-X, Amended Sales and Use Tax Return for that same period if it later determines that all or part of the tax shown on the original return was paid in error.

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,

Samuel J. Moore
Associate Counsel

SJM:bkl