

This letter responds to a survey. (This is a GIL.)

January 19, 2017

Dear Xxxx:

This letter is in response to your letter dated November 1, 2016, in which you requested 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:

Sales Tax Scorecard – Illinois – October 6, 2016

COMPANY is developing a sales tax administration scorecard. We seek your assistance in reviewing and providing input on the conclusions reached below, including the references, on the different topics for your state.

State’s Tax on Business Inputs

- Does the state have a manufacturing equipment exemption?

Yes.

*Covers sale of machinery and equipment used primarily in manufacturing.
35 ILCS 120/2-45; 35 ILCS 105/3-50; 35 ILCS 110/2; 35 ILCS 115/2(e).*

- Does the exemption cover the entire facility (integrated plant); or provide a more limited exemption (e.g., only equipment used directly in manufacturing)?

Limited.

- Does the state have a manufacturing inputs exemption?

Partial.

Covers inputs that goes into and forms a part of TPP sold at retail.

ILCS Chapter 35 §120/1 ; Ill. Admin. Code 86 §130.210(b) ; Ill. Admin. Code 86 §130.215(b)

- Does the state have an exemption that applies to the purchase of equipment by the following service providers:

- Wired and Wireless Telecommunication Service Providers

No.

- Are the services themselves subject to a sales tax or other excise tax when sold to an end use consumer?

Wired: Yes.

Wireless: Yes.

ILCS Chapter 35 § 630/3

- Cable Service Providers

No.

- Are any of the above services subject to a sales tax or other excise tax when sold to an end-use consumer?

No.

Illinois Dept. of Rev. General Information Letter No. ST 04-0193-GIL, , 11/01/2004

- Electric and gas products/services

No.

35 ILCS 120/2-45

- Are sales of electricity and gas themselves subject to a sales tax or other excise tax when sold to an end use consumer?

Electric: No.

Gas: No.

Ill. Admin. Code 86 § 130.101 ; Illinois Dept. of Rev. General Information Letter No. ST 03-0135-GIL, , 08/21/2003; Illinois Dept. of Rev. General Information Letter No. ST 07-0060-GIL, , 06/11/2007

State's Sales Tax Administration

- Does the state have local sales tax jurisdictions; and, if so, approximately how many local sales tax jurisdictions are there?

Yes. 442.

- If yes, is the local sales and use tax centrally administered?

No. Local governments may impose additional taxes that are not administered by the state

ST-62 (R-06/16) pg. 20

<http://www.revenue.state.il.us/publications/localgovernment/st-62.pdf>

- If yes, do all the local sales tax jurisdictions have to use the same tax base as the state?

No. Local governments may impose additional taxes that are not collected by the state

ST-62 (R-06/16) pg. 20

<http://www.revenue.state.il.us/publications/localgovernment/st-62.pdf>

- Does the state impose a “good faith” requirement on sellers accepting exemption certificates (e.g., the seller can be held responsible for determining whether a purchaser qualifies for an exemption even if the exemption certificate is properly completed)?

No.

Ill. Admin. Code tit. 86, §130.1405

- Does the state allow a seller at least 120 days during an audit to obtain valid exemption certificates (please provide number of days)?

Unknown.

- Can multistate exemption certificates (MTC and SSUTA) be used to claim an exemption?

Yes. However, only accepted as resale certificate when it contains purchaser's IL sales and use tax registration number.

MTC Uniform Certificate (5/16)

<http://www.mtc.gov/getattachment/Resources/Uniform-Sales-Use-Tax-Exemption-Certificate/Uniform-Sales-and-Use-Certificate-5-2016a.pdf.aspx>

- Are sellers required to capture and verify exemption account numbers?

Yes.

Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue, 409 N.E.2d 136 (3rd Dist. 1980)

- Does the state provide vendor compensation to some or all sellers?

Yes, 1.75% per calendar year.

35 ILCS 105/9; 35 ILCS 110/9; 35 ILCS 115/9; 35 ILCS 120/3

- Does the state have a broad-based direct pay provision (*i.e.*, not limited to certain types of manufacturers)?

Yes.

Although the application process is detailed, it is not limited to any particular class of taxpayer.

Ill. Admin. Code tit. 86, §130.2520

State's Uniformity with Other States

- Is the state a full member of the Streamlined Sales and Use Tax Agreement?

No.

- Does the state impose a tax on digital products (*i.e.*, digital audio, video and books)?

No.

ST 15-0104 (GIL) (10/15)

<http://www.revenue.state.il.us/LegalInformation/LetterRulings/st/2015/ST-15-0104-GIL.pdf>

- If yes, is the tax on digital products based on the products categorization as a service or some other express reference?

N/A

- If yes, is the tax on digital products based on the enactment of a specific law to tax such products (not administrative position)?

N/A

- Does the state impose a tax on a person merely accessing (no delivery) of pre-written computer software?

No, because the department declines to take a position.

ST 13-0049-GIL (9/13)

<http://www.revenue.state.il.us/LegalInformation/LetterRulings/st/2013/ST-13-0049.pdf>

- If yes, is the tax imposed based on the access to software's categorization as a service or some other express reference?

N/A

- If yes, is it based on the enactment of a specific law to tax such software (not administrative position)?

N/A

State's Tax Payment Administration

- Does the state allow taxpayers to remit the tax using ACH debit and credit?

Legally, yes.

Ill. Admin. Code tit. 86, § 750.600(a)

However, there is no clear ACH Debit option on the website.

<http://tax.illinois.gov/electronicsservices/businesses/>

- Does the state require sellers to make accelerated payments (e.g., payments of the tax prior to the due date of the return)?

Yes. Returns are due monthly.

Taxpayers with average monthly tax of \$20,000 or more are accelerated.

ILCS Chapter 35 § 120/3

- If so, when are the payments required to be made?

Four times per month: the 7th, 15th, 22nd, and the last day of the month.

ILCS Chapter 35 § 120/3

- Does the state provide credit for sales, use, and similar taxes (e.g., motor vehicle excise tax) imposed by another state?

Yes.

35 ILCS 105/3-55(d)

- Is the credit for another state's tax allowed regardless of whether your state is imposing its sales tax or use tax?

No.

35 ILCS 105/3-55(d)

- Does the state allow a full credit for other states' state, local and similar taxes (e.g., not limited to state-to-state or local-to-local taxes)?

Unknown.

- Does the credit against sales tax paid include tax paid to another state on accelerated lease payments (e.g., sales tax must be paid upfront for all lease payments)?

Unknown.

- Does the state have a bad debt provision?

Yes.

Ill. Admin. Code 86 § 130.1960(d) ; ILCS Chapter 35 § 120/6d(a)

- If so, does it apply to private-label credit cards?

Yes.

However, only the retailer may claim the deduction.

35 Ill. Comp. Stat. Ann. 120/6d(b)

- Are officers' SSNs and/or home addresses required on registration forms or returns?

Registration: Yes, fields for both.

REG-1 (3/15)

<http://www.revenue.state.il.us/taxforms/Reg/REG-1.pdf>

Return: No.

ST-1 (Rev 05)

<http://www.revenue.state.il.us/taxforms/Sales/ST-1.pdf>

State's Transparency of Sales Tax

- Does the tax agency website have a central location where taxpayers can access sales/use tax laws, current regulations, information releases, forms, and explanations of how the sales/use is applied?

Partial.

Statutes, regulations, and rulings available via "Laws / Regs / Rulings" on the top left.

<http://tax.illinois.gov/businesses/taxinformation/sales/rot.htm>

- Does the state provide both current and historical tax rate and boundary database on its website in a format that can be uploaded for use by sellers in their POS systems?

Tax Rates: No. Current rates only.

<http://www.revenue.state.il.us/Publications/Sales/>

Boundaries: Yes.

<http://www.revenue.state.il.us/Publications/Sales/>

- Does the state provide broad liability relief to sellers and purchasers when they rely on tax agency's guidance, including the rate and boundary database?

No.

State's Audit/Refund Issues

- Does the state have a written policy that clearly allows taxpayers to use sampling to the same extent the tax agency can use it?

No.

This state's sampling guideline is that the auditor and taxpayer should review all aspects of sampling. No specifics that would enable to [sic] a taxpayer to perform state-approved sampling are provided. One guideline is that credits and overpayments should be projected along with liabilities. It is unclear if taxpayers may initiate sampling under that guideline.

Pub. 107 (12/98) pg. 3.

<http://www.revenue.state.il.us/publications/pubs/pub-107.pdf>

- Does the state prohibit the use of both private-contract auditing and contingent fee auditing?

No.

- Does the state allow sales/use tax assessments to be offset by sales/use tax refunds?

Unknown.

May do so during an Amnesty Program.

Ill. Admin. Code tit. 86, § 520.105(4)(A)(i)

The Comptroller's Office may seize refunds to enforce tax laws.

<http://www.revenue.state.il.us/Individuals/collection.htm>

- Does the state have a written process that allows purchasers to obtain refunds from the state without going through the seller?

Yes.

ST 13-0029-GIL (6/13)

<http://www.revenue.state.il.us/LegalInformation/LetterRulings/st/2013/ST-13-0029.pdf>

- Does the state preclude or have a process that curtails the application of a false claims act?

No.

Has false claims act. Only excludes income tax claims.

740 Ill. Comp. Stat. Ann. 175/3(c)

- Does the state preclude or have a process that curtails the application of class action lawsuits to sales and use taxes?

No.

Wong v. Whole Foods Mkt. Group, Inc., 15 C 848, 2015 WL 10852508 (N.D. Ill. June 15, 2015) (settled 2015)

Other Issues

- If this page is blank, there are no other issues. Other issues include:

DEPARTMENT'S RESPONSE:

We cannot approve the accuracy of private legal publications or respond to your survey in the format provided. We advise you to consult Illinois statutes and administrative rules, as well as Department publications on these matters. However, in the interest of limiting the dissemination of incorrect or incomplete information, we have reviewed the information provided and we make the following suggestions for changes or additions where noted.

Under the category "**State's Tax on Business Inputs**," we make the following comments:

- Under the question "Does the state have a manufacturing equipment exemption?," the citation for the primary exemption in the Retailers' Occupation Tax Act is 35 ILCS 120/2-5(14). The citation for the primary exemption in the Use Tax Act is 35 ILCS 105/3-5(18).
- Under the question "Are any of the above services subject to a sales tax or other excise tax when sold to an end-use consumer?," as it relates to cable service providers, ST 08-0098-GIL states clearly that the provision of cable television service generally is not subject to the Telecommunications Excise Tax.
- Under the question "Are sales of electricity and gas themselves subject to a sales tax or other excise tax when sold to an end use consumer?," it should be noted that, although these items are not subject to Retailers' Occupation Tax or Use Tax, they are subject to Electricity Excise Tax (35 ILCS 640/Act) for electricity and Gas Revenue Tax (35 ILCS 615/Act) and Gas Use Tax (35 ILCS 173/Act) for natural gas.

Under the category "**State's Sales Tax Administration**," we make the following comments:

- Under the question "If yes, is the local sales and use tax centrally administered?," although it is true that units of local government may impose some locally-administered sales taxes, such as a tax on food and beverages for home rule units, generally, local sales taxes are administered by the Illinois Department of Revenue. This includes Home Rule Municipal Retailers' Occupation Tax (65 ILCS 5/8-11-1), Non-Home Rule Municipal Retailers' Occupation Tax (65 ILCS 5/8-11-1.3), Business District Retailers' Occupation Tax (65 ILCS 5/11-74.3-6), County Public Safety and Transportation Tax (55 ILCS 5/5-1006.5), County School Facilities Tax (55 ILCS 5/5-1006.7), and a number of Special District taxes, such as mass transit district taxes.
- Under the question "If yes, do all the local sales tax jurisdictions have to use the same tax base as the state?," the answer, for State-administered local sales taxes, is generally yes. What is commonly referred to as "sales tax reform" was implemented in 1990 under Public Act 85-1135. That Act abolished the then existing Municipal Retailers' Occupation Tax and County Retailers' Occupation Tax and incorporated those taxes into the State Retailers' Occupation Tax, increasing the rate from 5% to 6.25%, with the 1.25% remitted back to units of local government. This Act then authorized the imposition by municipalities of the Home Rule Municipal Retailer's Occupation Tax, and, later, the Non-Home Rule Municipal Retailers' Occupation Tax. One tenet of this reform was to impose the State and local taxes on the same base generally – with uniform exemptions. The exception is that locally imposed sales taxes generally exclude titled and registered property as well as items taxed

at the low rate (1%) under the State tax, which consists generally of grocery foods and prescription and non-prescription drugs.

Under the category “**State’s Uniformity with Other States,**” we make the following comments:

- Under the question “Does the state impose a tax on a person merely accessing (no delivery) of pre-written computer software?,” we refer you to ST 16-0033 GIL which expresses the Department’s current position on what is often referred to as “cloud computing.”

Under the category “**State’s Tax Payment Administration,**” we make the following comments:

- Under the question “Does the state allow a full credit for other states’ state, local and similar taxes (e.g., not limited to state-to-state or local-to-local taxes)?,” Illinois does allow credit for other states’ state, local and similar taxes. See *Philco Corp v. Dept. of Revenue*, 40 Ill. 2d 312 (1968).
- Under the question “Does the credit against sales tax paid include tax paid to another state on accelerated lease payments (e.g., sales tax must be paid upfront for all lease payments)?,” Illinois does allow credit for accelerated lease payment made if those payments were both properly due and paid to the other state at the time they were paid. See *Philco Corp v. Dept. of Revenue*, 40 Ill. 2d 312 (1968).
- Under the question “Are officers’ SSNs and/or home addresses required on registration forms or returns?,” we would add a citation to the statutory provision that governs registration for Retailers’ Occupation Tax – 35 ILCS 120/2a. We also note that, for publicly traded corporations, only the last 4 digits of the officer’s SSN is required.

Under the category “**State’s Transparency of Sales Tax,**” we make the following comments:

- Under the question “Does the tax agency website have a central location where taxpayers can access sales/use tax laws, current regulations, information releases, forms, and explanations of how the sales/use is applied?,” we would refer you to the “Quick Links” Section of the home page, which will link you to laws, administrative rules, letter rulings, and publications, among other things. In addition, the button for questions will lead you to answers to specific questions about the taxes administered by the Department.
- Under the question “Does the state provide both current and historical tax rate and boundary database on its website in a format that can be uploaded for use by sellers in their POS system?,” we note that tax rate information, both current and historical, can be found in the Department’s Tax Rate Database, found in the Quick Links Section of the website.
- Under the question “Does the state provide broad liability relief to sellers and purchasers when they rely on tax agency’s guidance, including the rate and boundary database?,” we note that under the Taxpayer’s Bill of Rights Act the Department is required to abate taxes and penalties assessed based upon erroneous written information or advice given by the Department. (20 ILCS 2520/4(c))

Under the category “**State’s Audit/Refund Issues**,” we make the following comments:

- Under the question “Does the state prohibit the use of both private-contract and contingent fee auditing?,” it is important to note that the Illinois Department of Revenue does not engage in private-contract auditing or contingent fee auditing. In fact, the confidentiality provisions of the Retailers’ Occupation Tax Act prohibit the Department from sharing private taxpayer information gained from returns or investigations except as specifically authorized. See 35 ILCS 120/11.
- Under “Does the state allow sales/use tax assessments to be offset by sales/use tax refunds?,” we would direct you to the provision in the Department of Revenue Law of the Civil Administrative Code of Illinois that authorizes the Department to credit an overpayment against an existing final liability. See 20 ILCS 2505/2505-275.
- Under the question “Does the state have a written process that allows purchasers to obtain refunds from the state without going through the seller?,” the answer to this question is no. Only the party who paid tax to the Department may file a claim for credit. Please see ST 15-0039-GIL, dated 6/24/2015.

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