

This letter discusses sales by secondary distributors. 35 ILCS 130/2c. (This is a PLR.)

January 31, 2018

Re: Private Letter Ruling request by COMPANY

Dear Xxxxx:

This letter is in response to your letter dated November 15, 2017, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

COMPANY is an Ill. corporation, which has operated initially, as a cigarette subjobber from 1973 to 1990, and subsequently as a direct cigarette distributor from 1990 to the present. Through the years, we have purchased products from various suppliers, as well as manufacturers. We believe it’s noteworthy, that we made a conscious decision to conduct our business, solely in the state of Illinois, even though we are only 20 minutes from the STATE border, hoping that it would simplify both our pricing and any reporting requirements. During this time, all of our returns have been filed accurately, in a timely manner. And, we have always been co-operative with all state agencies at all times.

For the past 15 years, we have relied heavily on our ability to purchase cigarettes from RETAILER for both financial and logistical reasons. We have now been told we cannot continue these purchases without a CT License, which under the current interpretation of the law, we are not allowed to obtain. Therefore, we are requesting an exception to that law, which would allow us to procure such a license from the state, providing that we continue to accurately report these transactions, and comply with all other rules and

regulations, governing such transactions. To the best of our knowledge, this ruling would be of benefit to us, with absolutely no adverse effect on any other party.

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 must be evidenced by a stamp affixed to each original package of cigarettes. See 86 Ill. Adm. Code 440.20. The Cigarette 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 Cigarette Tax Act was amended to allow retailers to sell stamped original packages of cigarettes for resale to smaller retailers. Prior to the amendment, the Act did not allow retailers to sell cigarettes for resale. A new class of distributors was created, called "secondary distributors."

"Secondary distributor" means any person engaged in the business of selling cigarettes who purchases stamped original packages of cigarettes from a licensed distributor under this Act or the Cigarette Use Tax Act, sells 75% or more of those cigarettes to retailers for resale, and maintains an established business where a substantial stock of cigarettes is available to retailers for resale.

A person wishing to do business as a secondary distributor must obtain a secondary distributor's license. See 35 ILCS 130/4c.

The Cigarette Tax Act was also amended to require retailers to obtain a cigarette retailers license in order to sell cigarettes at retail. See 35 ILCS 35 ILCS 130/4g. This license is known as a "retailer's license" and is designated as a "CT license" by the Department.

A secondary distributor is required to sell 75% or more of its inventory to retailers for resale. This means that no more than 25% of its sales can be made at retail to consumers and users. Although the Act does not expressly prohibit a secondary distributor from selling original packages of cigarettes to a distributor, any sales it makes to a distributor will count towards the sales made at retail, possibly making it more difficult for the secondary distributor to meet the requirement to sell 75% or more of its inventory to retailers for resale. Moreover, secondary distributors have no express obligation under the Cigarette Tax Act to sell original packages of cigarettes to a distributor for resale.

It is our understating that you have been denied a retailer's license by the Department because you do not make sales of original packages of cigarettes at retail. If you do not intend to make any

sales of cigarettes at retail, and the sole reason for seeking a retailer's license is to purchase cigarettes for resale from a secondary distributor, the Department will not issue to you a retailer's license.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, 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
Chairman, Private Letter Ruling Committee

RSW:bkl