

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax 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. 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. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

December 6, 2018

Re: Sales Tax Reimbursement

Dear Xxxx

This letter is in response to your letter dated November 1, 2018, 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:

I am writing on behalf on XXX. XXX purchased a vehicle from COMPANY. The vehicle was repurchased by COMPANY 1 in April 2017 under the New Vehicle Buyer Protection Act.

XXX was reimbursed his purchase price, dealer document fees, license fees, COMPANY 2 extended warrant, and COUNTY tax. XXX has not been reimbursed Illinois Sales Tax. According to the settlement agreement, XXX has to receive applicable sales tax refund from the State of Illinois.

Can you please advise me what steps my client needs to take with the Illinois Department of Revenue for the state to reimburse XXX state sales tax on the repurchased vehicle?

Thank you in advance for your assistance.

DEPARTMENT'S RESPONSE:

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 his supplier, only that supplier/retailer can file a claim for credit.

Tax is deemed to be erroneously paid by a retailer when the manufacturer of a motor vehicle sold by the retailer accepts the return of that automobile and refunds to the purchaser the purchase price of the vehicle, as provided in Section 3 of the New Vehicle Buyer Protection Act [815 ILCS 380/3]. The claim is limited to taxes applicable to the purchase price of the automobile refunded to the consumer, which includes all collateral charges required to be included in the sales tax calculation (e.g., documentary fees), but does not include any reasonable allowance for consumer use of the automobile deducted from the purchase price by the manufacturer. Retailers filing such claims must comply with all requirements of 86 Ill. Adm. Code 130.1501.

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 supplier and the purchaser.

In the scenario described in your letter, only COMPANY can file a claim for credit or refund. COMPANY customers cannot file claims for credit or refund directly with the Department based upon tax that was paid by customers to COMPANY. This may not appear to be equitable, but no mechanism exists under Illinois sales tax laws for customers to make such claims directly with the Department unless the customer is the one that remitted the tax directly to the Department.

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:bkf