

ST 20-0019-GIL 10/2/2020 RETAILERS' OCCUPATION TAX:

This letter discusses purchases of tangible personal property by the federal government that are exempt from use tax pursuant to federal law. 35 ILCS 120/2-5(16). (This is a GIL.)

October 2, 2020

Dear Xxxx:

This letter is in response to your e-mail dated March 9, 2020, 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:

COMPANY is exempt from the Illinois Retailer's Occupation Tax on the sale of motor fuels in accordance with Illinois Department of Revenue Regulations, Title 86, Chapter 1, Part 130, Section 130.120(s), which states:

Nontaxable Transactions - The tax does not apply to receipts from sales:

... (s) of any petroleum product, if the seller is prohibited by federal law from charging tax to the purchaser.

- 1) *For example, federal law prohibits sellers from charging tax to COMPANY when it purchases petroleum products. However, federal law does not relieve the seller of Retailers' Occupation Tax liability in these transactions. For that reason, the exemption set out in this subsection is necessary to relieve the seller of Retailers' Occupation tax liability when making sales of petroleum products to COMPANY.*
- 2) *The nontaxable transaction set out above is also applicable to local Retailers' Occupation Taxes imposed by municipalities, counties, the Regional Transportation Authority and TRANSIT DISTRICT. This exemption existed prior to the enactment of Section 2-70 and will not sunset:*

Attached is a copy of the Illinois statute for your reference, which will allow you to process the exemption for taxes on purchases of petroleum products by COMPANY. It is not clear administratively how Illinois intends this exemption to work, but it clearly exempts the retailer that is selling the petroleum product to COMPANY.

If you have any questions or want to discuss further, you can call me, or you can send me an e-mail. Thanks for your help on this matter.

DEPARTMENT'S RESPONSE:

Prior to recent amendments to Section 2-5(16) of the Retailers' Occupation Tax Act, Section 2-5(16) stated that receipts from sales of any petroleum product were exempt from tax if the seller was prohibited by federal law from charging tax to the purchaser. 35 ILCS 120/2-5(16). Based on the exemption, the Department's rules stated that retailers were relieved from Retailers' Occupation Tax liability on the sales of petroleum products to COMPANY. 86 Ill. Adm. Code 130.120(s)(1).

The General Assembly recently amended Section 2-5(16) of the Retailers' Occupation Tax Act to address purchases of tangible personal property by the federal government that are exempt from use tax pursuant to federal law. P.A. 100-1171, effective January 4, 2019. Section 2-5(16) now states that Retailers' Occupation Tax does not apply to tangible personal property sold to a purchaser if the purchaser is exempt from use tax by operation of federal law.

The Department in the past has recognized that COMPANY is exempt from use tax by operation of federal law. 49 USC Sec. 24301. Receipts received from the sale of petroleum products to COMPANY remain exempt from Retailers' Occupation Tax after the enactment of P.A. 100-1171. The retailer must maintain books and records to document sales of tangible personal property to COMPANY.

The Department intends to amend Section 130.120(s) to reflect the changes made by P.A. 100-1171.

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:rkn