

This letter discusses Section 2-5(40) of the Retailers' Occupation Tax Act. 35 ILCS 120/2-5(40).
(This is a GIL.)

October 8, 2020

Dear Xxxx:

This letter is in response to your letter dated January 20, 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 requests a ruling on the proper treatment of sales tax that is uncollectible from its customer. Taxpayer is requesting expeditious handling of this matter to mitigate late payment penalties and interest.

COMPANY is an FAA-certified (###) Part-145 aircraft repair station. In compliance with current law, COMPANY charges appropriate sales tax to all customers, unless they provide a tax-exempt certificate.

One of our customers has refused, in writing, to pay the sales tax charged on materials/parts/equipment incorporated into his aircraft. He bases his refusal on a pending legislature vote to override the Governor's veto of bill HB3902. Bill HB3902 would reinstate a sales-tax exemption on "materials, parts, equipment...incorporated into...an aircraft as part of the modification, refurbishment...or maintenance of the aircraft" in effect from January 1, 2010 to December 31, 2014 (see attached).

COMPANY charged sales tax to the customer; the customer refuses to pay it.

Ruling Request:

- Is COMPANY required to report and remit to IDOR sales tax which its customer refuses to pay to COMPANY?

DEPARTMENT'S RESPONSE:

Section 2-5(40) of the Retailers' Occupation Tax Act (35 ILCS 120/2-5/40) sunset by operation of law on December 31, 2014. See 35 ILCS 120/2-70. HB 3902 passed the General Assembly and expressly continued the exemption until December 31, 2024. The Governor vetoed HB 3902 on November 15, 2019. The Governor's veto was overridden by the General Assembly, and HB 3902 became effective on February 5, 2020. P.A. 101-629. By enactment of P.A. 101-629, Section 2-5(40) continues through December 31, 2024.

The General Assembly included additional language in HB 3902 to address the period from the date Section 2-5(40) sunset by operation of law (December 31, 2015) and the date of enactment of HB 3902 (February 5, 2020).

"It is the intent of the General Assembly that the exemption under this paragraph (40) applies continuously from January 1, 2010 through December 31, 2024; however, no claim for credit or refund is allowed for taxes paid as a result of the disallowance of this exemption on or after January 1, 2015 and prior to the effective date of this amendatory Act of the 101st General Assembly."

As result of HB 3902, Section 2-5(40) was in effect for the period January 1, 2010, until February 5, 2020. Qualifying purchases made during this period and thereafter are exempt from tax. Retailers that did not collect and remit the tax during this period are not liable for the tax. However, retailers that did collect and remit the tax during this period cannot file a claim for a refund of tax paid during this period.

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,

Debra Boggess
Associate Counsel

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