

A licensed distributor or supplier may make tax free sales of motor fuel, with respect to which he is otherwise required to collect the tax, when a sale of dyed diesel fuel is made by the licensed distributor or supplier to the end user of the fuel who is not a licensed distributor or a licensed supplier for non-highway purposes and the fuel is delivered or dispensed in the manner provided in the statute. See 35 ILCS 505/6(7); 35 ILCS 505/6a(5); and 86 Ill. Adm. Code 500.210(g). (This is a GIL.)

December 7, 2022

NAME/ADDRESS

Dear Mr. XXX:

This letter is in response to your letter dated September 12, 2022, 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:

Pursuant to 2 Ill. Adm. Code 1200.120, we are requesting a General Information Letter (GIL) related to an Illinois taxpayer's ("Taxpayer") sale of Dyed Diesel Fuel. Taxpayer is an Illinois distributor or supplier of motor fuel. Taxpayer sells special fuel sold or used for non-highway purposes ("Dyed Diesel Fuel"). Taxpayer follows all of the documentation requirements for the sale of tax free Dyed Diesel Fuel as set forth in 35 ILCS 505/6(7) and/or 35 ILCS 505/6a(5) and recent Illinois Department of Revenue Information Bulletin 2022-29.

Taxpayer has questions regarding sales made to rental companies that purchase Dyed Diesel Fuel to power non-highway vehicles and equipment such as bulldozers and generators. Taxpayer pays Illinois Retailers' Occupation Tax on these sales of Dyed Diesel Fuel as would be customary for sales to an end user of tangible personal property in Illinois.

These rental company customers do not submit resale certificates to Taxpayer when purchasing this dyed diesel fuel.

Taxpayer follows the rules set forth in 35 ILCS 505 and described in 2 [sic] Ill. Adm. Code 500.26 [sic] and 500.210(g) when making such sales of Dyed Diesel Fuel to its rental company customers. Taxpayer has no reason to believe that its rental company customers are using any fuel for on-highway purposes nor reselling the fuel. However, Taxpayer does not have the ability to examine its customers' books and records to determine if the Dyed Diesel fuel is included in the price of the rentals or separate charges are being added to its customers' invoices for the cost of the Dyed Diesel Fuel above and beyond the base charges for the non-highway vehicle or equipment rentals. Taxpayer certainly has no insight into how its rental company customers are handling their sales and use tax collection and remittance responsibilities with the State of Illinois. However, Information Bulletin FY 2022-29 states that:

As a licensed distributor or supplier, you can only make a sale of dyed diesel fuel to another licensed distributor or supplier or to the end user of fuel. You cannot sell dyed diesel fuel to an unlicensed person for resale.

It is not clear whether this statement adds a level of investigative effort by a seller of Dyed Diesel Fuel that is not found in 35 ILCS 505 or 2 [sic] Ill. Adm. Code 500.26 [sic] and 500.210(g). The rules and regulations for the method of delivery, documentation required on invoices as well as storage tanks are among the most specific found in all of the Illinois sales and use tax rules and regulations yet the above statement is not only extremely general but also impossible for the average distributor or supplier to monitor and control unless the standard meant by the Illinois Department of Revenue is that a seller cannot "knowingly" sell Dyed Diesel Fuel to an unlicensed person for resale.

Taxpayer has had limited conversations with the Illinois Department of Revenue on this matter as well as conversations about this issue with some of its larger rental company customers. Additionally, taxpayer has been informed anecdotally of communication between the Illinois Department of Revenue and some of its competitors on this issue. Staff at the Illinois Department of Revenue have suggested to various taxpayers that they should ask specific questions of its customers which "should" mitigate some of the concerns relating to this issue and we believe that some Illinois Department of Revenue staff members have suggested to some taxpayers that they should request certain written statements from its customers regarding their intention to resell, or not, Dyed Diesel Fuel, but neither of these suggestions/requirements can be found in Illinois law,

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regulations or even in the recent informational bulletin related to the sale of Dyed Diesel Fuel. There seems to be significant confusion as to Taxpayer's obligations with regards to these types of transactions.

REQUEST FOR RULING

Taxpayer respectfully requests answers to the following questions:

- 1) Does the Illinois Department of Revenue have any additional rules or regulations with regards to the tax-free sale of Dyed Diesel Fuel that create some duty on an Illinois licensed distributor or supplier to investigate how a business, such as a rental company, charges its customers for the fuel used to power vehicles and equipment rented for non-highway use?
- 2) Is a rental company that rents out machinery, equipment and off-highway vehicles considered to be reselling Dyed Diesel Fuel if it rents such items filled with Dyed Diesel Fuel or is it the end user of such Dyed Diesel Fuel?
- 3) If a rental company described above is considered the end user of Dyed Diesel Fuel purchased to power non-highway vehicles or equipment, does the language on a rental company's invoice impact whether it is an end user of Dyed Diesel Fuel which could in turn impact the ability of the distributor or supplier to sell Dyed Diesel Fuel to the rental company?
- 4) Is an Illinois licensed Dyed Diesel Fuel distributor or supplier protected by getting verbal or written confirmation from its customers that they are the end users of such Dyed Diesel Fuel and that they will not be reselling such fuel?

I look forward to your response to these questions. Please contact me at (###) ###-#### if you need any additional information or clarification before responding to these questions.

DEPARTMENT'S RESPONSE:

Section 2 of the Motor Fuel Tax Law, 35 ILCS 505/2, imposes a tax on "the privilege of operating motor vehicles upon the public highways and recreational-type watercraft upon the waters of this State." Effective January 1, 2023, the rate of tax imposed on all motor fuel used in motor vehicles operating on the public highways and recreational type watercraft is 42.3 cents per gallon and shall be increased on July 1, 2023 and each July 1 thereafter by an amount equal to the percentage increase, if any,

in the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor for the 12 months ending in March of that year, rounded to the nearest one tenth of one cent. The tax on the privilege of operating motor vehicles which use diesel fuel, liquefied natural gas, or propane is at the rate of tax on motor fuel plus an additional 7½ cents per gallon. For current tax rates on motor fuel and diesel, please see the Department's tax rate database at tax.illinois.gov.

Generally, Motor Fuel Tax is due when motor fuel is purchased by anyone other than a licensed distributor or supplier for purposes of resale. Persons other than licensed distributors or suppliers who lose motor fuel through any cause or use motor fuel upon which the Motor Fuel Tax has been paid for any purpose other than operating a motor vehicle upon the public highways or waters shall be reimbursed and repaid the amount so paid. See 86 Ill. Adm. Code 500.235. Section 13 of the Motor Fuel Tax Law sets forth the provisions for such reimbursement. Beginning January 1, 2000, the State of Illinois implemented a dyed diesel fuel program. This program provides for tax-free purchases of dyed diesel fuel that will be used for nonhighway purposes. Section 6 of the Motor Fuel Tax Law, as recently amended by Public Act 102-1019, provides as follows:

A distributor may make tax free sales of motor fuel, with respect to which he is otherwise required to collect the tax, only as specified in the following items 1 through 7.

...
...

7. When a sale of dyed diesel fuel is made by the licensed distributor to the end user of the fuel who is not a licensed distributor or a licensed supplier for non-highway purposes and the fuel is (i) delivered from a vehicle designed for the specific purpose of such sales and delivered directly into a stationary bulk storage tank that displays the notice required by Section 4f of this Act, (ii) delivered from a vehicle designed for the specific purpose of such sales and delivered directly into the fuel supply tanks of non-highway vehicles that are not required to be registered for highway use, or (iii) dispensed from a dyed diesel fuel dispensing facility that has withdrawal facilities that are not readily accessible to and are not capable of dispensing dyed diesel fuel into the fuel supply tank of a motor vehicle.

A specific notation is required on the invoice or sales slip covering such sales, and any supporting documentation that may be required by the Department must be obtained by the distributor. The distributor shall obtain and keep the supporting documentation in such form as the Department may require by rule. See 35 ILCS 505/6; comparable language related to suppliers of special fuel is found at 35 ILCS 505/6a(5).

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The Department's regulations further provide that the seller must retain the invoice number and date, name of carrier, bill of lading/manifest number, name and address of purchaser, Illinois origin, Illinois destination, and invoiced gallons sold. A legible and conspicuous notice stating "Dyed Diesel Fuel, Non-taxable Use Only, Penalty For Taxable Use" must appear on all shipping papers (including delivery tickets or manifests and excluding material safety data sheets), bills of lading, and invoices accompanying any sale of dyed diesel fuel. See 86 Ill. Adm. Code 500.210(g). A legible and conspicuous notice stating "Dyed Diesel Fuel, Non-taxable Use Only" must appear on all containers, storage tanks, or facilities used to store or distribute dyed diesel fuel. See 35 ILCS 505/4f and 86 Ill. Adm. Code 500.206(c). In the event that the conditions for making a tax-free sale as described above are not met, the Department will assess the distributor for the Motor Fuel Tax.

While we are unable to provide a binding opinion on this matter in the context of a General Information Letter, in general, a rental company that rents out machinery, equipment, and vehicles for non-highway purposes and uses dyed diesel fuel in those items is the end user of that fuel for purposes of the exemption at 35 ILCS 505/6(7) and 35 ILCS 505/6a(5). A licensed distributor or supplier of dyed diesel fuel to such a purchaser should ensure that it creates and retains documentation to substantiate the exemption in accordance with the statute and the regulations. Distributors and suppliers generally are not required to verify that such rental companies do not resell the product when they make sales of dyed diesel in accordance with the statute and regulations cited above. However, distributors and suppliers do have an obligation to exercise good faith when making such sales. We note that any person who knowingly sells dyed diesel fuel without a license may be subject to civil and criminal penalties.

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 Moore
Associate Counsel

SJM:dlb