

ST-24-0001-GIL 01/04/2024 MOTOR FUEL

No person shall act as a distributor of motor fuel, supplier of special fuel, or receiver of fuel in Illinois without first applying for and obtaining a license from the Department. See 86 Ill. Adm. Code 500.201. Only those who are licensed in Illinois as a distributor of motor fuel or a supplier of special fuel may sell dyed diesel fuel for non-highway purposes. 86 Ill. Adm. Code 500.210(g). (This is a GIL.)

January 4, 2024

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated June 8, 2023, 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 Department’s regulation “Public Information, Rulemaking and Organization” provides that “[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored.” 2 Ill. Adm. Code 1200.110(a)(4). Further, the Department’s regulations regarding Private Letter Rulings provide that “[i]f there is case law or there are regulations dispositive of the subject of the request, the Department will decline to issue a letter ruling on the subject.” 86 Ill. Adm. Code 1200.110(a)(3)(D). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope, however, the following General Information Letter will be helpful in addressing your questions. In your letter you have stated and made inquiry as follows:

NAME, on behalf of COMPANY ("Company" or "taxpayer"), requests a Private Letter Ruling regarding the sale of corn oil and other fuel additives. Please find attached an executed Form IL-2848 Power of Attorney.

DISCLOSURES

In accordance with 2 Ill. Adm. Code Section 1200.110(b)(3), the subject of this request is not currently being examined as part of an audit by the Illinois Department of Revenue ("Department").

TAX YEAR

The ruling is requested for all tax periods after January 1, 2022.

TAXPAYER

COMPANY is an LLC involved in the maintenance and repair of farm type tractors. As part of its operations, COMPANY performs work on or modifies tractors for use in what are known as "tractor pulls." Tractor pulls are a competition or exhibition in which tractors attempt to pull varying weights over designated distances during specified periods. Tractor pulls are generally held in agricultural or fair settings and are never part of use of the tractor on public highways or roads. On occasion, the tractor's performance will be enhanced by the use of corn oil or other non-petroleum additives. The additives are not fuel. COMPANY, as part of its service to customers will sell corn oil and additives to the customers.

COMPANY collects and remits retailers' occupation taxes on its sales of property to its customers or pays the appropriate service taxes on tangible personal property transferred as part of its services.

COMPANY does not maintain a bulk storage facility. COMPANY does have a small amount of dyed diesel on hand to use in the tractors during servicing. The tank for the dyed diesel has an appropriate placard. COMPANY does not blend, refine or otherwise process fuels. COMPANY sells no fuels for on road use.

Under 35 ILCS 505/2 only fuels used upon public highways or the waters of the State are subject to motor fuel tax. Under 35 ILCS 505/1.1 and 1.3, the definitions of motor fuel and motor vehicles used throughout the Motor Fuel Tax Law do not include farm tractors. COMPANY is not aware of any authority to the contrary.

COMPANY requests a Private Letter Ruling that the sale of corn oil with additives for use in farm tractors for off-road use is not taxable under the Motor Fuel Tax Law. COMPANY also requests a ruling that it is not subject to registration under the Motor Fuel Tax Law with regard to corn oil sales.

If COMPANY can supply any further information, please contact me.

DEPARTMENT'S RESPONSE:

Motor Fuel Tax is imposed "on the privilege of operating motor vehicles upon the public highways, including toll roads, and recreational-type watercraft upon the waters of this State." 86 Ill. Adm. Code 500.200(a). "Motor fuel" means all volatile and inflammable liquids produced, blended or compounded for the purpose of, or which are suitable or practicable for, the propulsion of motor vehicles. Among other things, "motor fuel" includes "special fuel." "Special fuel" means all volatile and inflammable liquids capable of being used for the generation of power in an internal combustion engine except that it does not include gasoline as defined in Section 5(A) of the Law, or combustible gases as defined in Section 5(B) of the Law. Special fuel includes diesel fuel. See, 86 Ill. Adm. Code 500.100. "Diesel fuel" means any product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark. See, 86 Ill. Adm. Code 500.100. Finally, "blending" means, in relevant part, the mixing together by any process whatsoever, of any one or more products with other products, and regardless of the original character of the products so blended, provided the resultant product so obtained is suitable or practicable for use as a motor fuel. See, 86 Ill. Adm. Code 500.100.

The purchase and resale of items, such as pure corn oil or non-petroleum additives, does not generally fit within the definition of motor fuel unless sold as a motor fuel. If, however, corn oil or non-petroleum additives are sold for the propulsion of motor vehicles, then that product is motor fuel and is subject to the provisions of the Motor Fuel Tax Law. 86 Ill. Adm. Code 500.100. If corn oil or other non-petroleum additives are blended or otherwise combined with diesel fuel or any other fuel and the resulting product is sold for the propulsion of motor vehicles, then that product is motor fuel and is subject to the provisions of the Motor Fuel Tax Law. 86 Ill. Adm. Code 500.100. We note that only those who are licensed in Illinois as a distributor of motor fuel or a supplier of special fuel may sell dyed diesel fuel for non-highway purposes. 86 Ill. Adm. Code 500.210(g). See also, Department Publication PIO-71, Dyed Diesel Fuel Enforcement Program.

No person shall act as a distributor [of motor fuel], supplier [of special fuel], or receiver [of fuel] in Illinois without first applying for and obtaining a license from the Department. See 86 Ill. Adm. Code 500.201. Any person who knowingly acts as a distributor of motor fuel or supplier of special fuel, or receiver of fuel without having a license so to do . . . shall be guilty of a Class 3 felony. Each day any person knowingly acts as a distributor of motor fuel, supplier of special fuel, or receiver of fuel without having a license so to do or after such a license has been revoked, constitutes a separate offense. See 35 ILCS 505/15(1). In addition, please note that under Section 3 of the Motor Fuel Tax Law, a motor fuel blender must obtain a license as a motor fuel distributor as well as a blender's permit. 35 ILCS 505/3. Any person who acts as a

COMPANY

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blender in violation of Section 3 of [the Motor Fuel Tax Law . . .] is guilty of a Class 4 felony.

Please note that, in addition to any considerations under the Motor Fuel Tax law, persons engaged in the business of selling tangible personal property in Illinois are subject to the registration, reporting, and tax payment requirements of the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 130.101 et seq.

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 J. Moore
Associate Counsel