

ST 24-0001-PLR 03/07/2024 CIGARETTE TAX ACT

A licensed distributor may affix tax stamps to original packages of cigarettes purchased or obtained by a procurement affiliate who is a licensed distributor, who is under the same common ownership, and who purchased or obtained the cigarettes directly from an out-of-State manufacturer holding a permit under Section 4b of the Cigarette Tax Act. See 86 Ill. Adm. Code 440.50; 35 ILCS 130/3. (This is a PLR.)

March 7, 2024

NAME
COMPANY
ADDRESS

Dear XXXX:

This letter is in response to your letter dated February 29, 2024, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

This correspondence is written to seek a Private Letter Ruling (“PLR”) from the Illinois Department of Revenue (“DOR”) concerning a limited aspect of the Cigarette Tax Act, particularly 35 ILCS 130/3. For purposes of the request outlined below, “COMPANY” shall mean COMPANY “PARENT COMPANY” shall mean COMPANY1 “PROCUREMENT AFFILIATE” shall

mean COMPANY2. This PLR request is submitted by COMPANY. [REDACTED]

I. Complete Statement of Facts and Other Pertinent Information

COMPANY is authorized to do business in Illinois and operates a distribution center located in CITY, Illinois. COMPANY is a distributor of cigarettes in this state as defined by 35 ILCS 130/1 being "Any person engaged in the business of selling cigarettes in this State who brings or causes to be brought into this State from without this State any original packages of cigarettes on which original packages there is no authorized evidence underneath a sealed transparent wrapper showing that the tax liability imposed by this Act has been paid or assumed by the out-of-State seller of such cigarettes, for sale or other disposition in the course of such business." COMPANY is licensed as a distributor of cigarettes under 35 ILCS 130/4. COMPANY is a wholly-owned subsidiary of PARENT COMPANY.

PROCUREMENT AFFILIATE is authorized to do business in Illinois and operates consolidation warehouses, one of which relevant herein is located in CITY1, STATE1. PROCUREMENT AFFILIATE procures cigarettes from manufacturers of cigarettes permitted under 35 ILCS 130/4b as well as other tobacco products and vapor products from manufacturers for purposes of further providing COMPANY, [REDACTED] with supply of cigarettes, tobacco products and vapor products.

PARENT COMPANY holds 100 percent ownership interest in its subsidiaries, COMPANY and PROCUREMENT AFFILIATE. Ultimate control of COMPANY and PROCUREMENT AFFILIATE is 100 percent common through PARENT COMPANY. [REDACTED].

PARENT COMPANY holds common direct distributorship contracts with various manufacturers of cigarettes such that each manufacturer's direct distributorship contract governs all procurement and distribution activities by PARENT COMPANY, COMPANY, and PROCUREMENT AFFILIATE. The terms and conditions of such direct distributorship contracts with manufacturers of cigarettes apply to PARENT COMPANY, COMPANY, and PROCUREMENT AFFILIATE alike.

PROCUREMENT AFFILIATE currently procures, under direct distributor contracts held under PARENT COMPANY, cigarettes, tobacco products and vapor products from manufacturers. PROCUREMENT AFFILIATE obtains title to and receives cigarettes along with other tobacco and vapor products from each respective manufacturer [REDACTED]. [REDACTED]:

(a) [REDACTED]

(b) [REDACTED]

[REDACTED]. PROCUREMENT AFFILIATE itself does not sell to or distribute to retailers or customers other than procurement for PARENT COMPANY and its wholly-owned affiliates.

[REDACTED]

COMPANY desires to participate in the procurement process of cigarettes through PROCUREMENT AFFILIATE while continuing distributing cigarettes through the direct distributor contracts held by PARENT COMPANY. [REDACTED].

In outlining to DOR the intention of COMPANY to obtain its cigarettes through PROCUREMENT AFFILIATE, DOR advised that PROCUREMENT AFFILIATE should license as a distributor under 35 ILCS 130/4. PROCUREMENT AFFILIATE duly complied and obtained licensure as a distributor of cigarettes and as a distributor of other tobacco products.

II. Specific Request for Ruling.

The request for ruling by COMPANY is to validate that COMPANY may obtain unstamped packages from PROCUREMENT AFFILIATE when purchased by PROCUREMENT AFFILIATE from a permitted manufacturer under a direct distributor contract held by PARENT COMPANY, and under which direct distributor contract COMPANY distributes the cigarettes in the State of Illinois, further recognizing that COMPANY may affix Illinois tax stamps to such packages of cigarettes as may be required.

III. Documents Relevant to the Request

No documents are provided or believed necessary for consideration of this Specific Request for Ruling. It is understood that any ruling issued by DOR would be limited to the facts set forth herein.

IV. Tax Period at Issue

All time periods on and after the date of DOR's private letter ruling granting this request for ruling. There are no audits or litigations pending with DOR with regard to this issue.

V. A Statement That to the Best of the Knowledge of Both the Taxpayer and the Taxpayer's Representative DOR has not Previously Ruled

on the Same or a Similar Issue for the Taxpayer or a Predecessor, or Whether the Taxpayer or any Representatives Previously Submitted the Same or a Similar Issue to DOR but Withdrew it Before a Letter Ruling was Issued.

To the best of COMPANY's and its representative's knowledge and belief, DOR has not previously ruled on the same or similar issue for COMPANY, its affiliates, or any predecessor to COMPANY or its affiliates. Nor has COMPANY or any prior representative of COMPANY previously submitted the same or a similar issue to DOR that was withdrawn before a letter filing was issued.

VI. Statement of Authorities Supporting the Taxpayers' Views

Statute: 35 ILCS 130/1 defines a distributor as "Any person engaged in the business of selling cigarettes in this State who brings or causes to be brought into this State from without this State any original packages of cigarettes on which original packages there is no authorized evidence underneath a sealed transparent wrapper showing that the tax liability imposed by this Act has been paid or assumed by the out-of-State seller of such cigarettes, for sale or other disposition in the course of such business."

Statute: 35 ILCS 130/3 provides in part, "A licensed distributor may ship or otherwise cause to be delivered unstamped original packages of cigarettes in, into, or from this State. . . . Any licensed distributor that ships or otherwise causes to be delivered unstamped original packages of cigarettes into, within, or from this State shall ensure that the invoice or equivalent documentation and the bill of lading or freight bill for the shipment identifies the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity by brand style of the cigarettes so transported, provided that this Section shall not be construed as to impose any requirement or liability upon any common or contract carrier."

Statute: 35 ILCS 130/3 provides in part, "Only distributors licensed under this Act and transporters, as defined in Section 9c of this Act [35 ILCS 130/9c], may possess unstamped original packages of cigarettes. Prior to shipment to a secondary distributor or an Illinois retailer, a stamp shall be applied to each original package of cigarettes sold to the secondary distributor or retailer. A distributor may apply tax stamps only to original packages of cigarettes purchased or obtained directly from an in-state maker, manufacturer, or fabricator licensed as a distributor under Section 4 of this Act [35 ILCS 130/4] or an out-of-state maker, manufacturer, or fabricator holding a permit under Section 4b of this Act [35 ILCS 130/4b]."

Informational Bulletin 2012-09: Issued in June of 2012, Information Bulletin 2012-01 expressly states “Stamped or unstamped cigarette packages may be sold or transferred between licensed cigarette distributors.”

Analogous Statute: In considering stamping between distributors owned or controlled by the same interests, 86 Ill. Adm. Code 440.90(c) provides, “Two or more distributors that use a common means of affixing revenue tax stamps or that are owned or controlled by the same interests shall be treated as a single distributor for the purpose of computing the discount.” See also, 35 ILCA 130/2(l).

Constitutional Considerations: The requirements imposed by the Cigarette Tax Act shall not apply where such application would be contrary to the Constitution and laws of the United States. Specifically relevant herein, Article I, Section 8, Clause 3 to the United States Constitution not only empowers Congress to pass federal laws, but it also limits state authority to regulate interstate commerce. 35 ILCS 130/2(b) clarifies that the cigarette tax imposed under that section “are not imposed upon any activity in such business in interstate commerce or otherwise, which activity may not under the Constitution and statutes of the United States be made subject of taxation by this State.” Because the legislature “legislates in the light of constitutional limitations,” constitutional avoidance should be applied, except to the point of disingenuous evasion. *Rust v. Sullivan*, 500 U.S. 173, 191 (1991). When it is reasonably possible to construe a challenged statute in a manner that preserves its constitutionality, there is a duty to do so. *People v. Hollins*, 2012 IL 112754, ¶ 13. See also, *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306-07 (2008), *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill. 2d 273, 291-92 (2004).

VII. Statement of Authorities Contrary to the Taxpayer’s Views

COMPANY is not aware of contrary authority interpreting 34 ILCS 130/3 [sic].

VIII. Statement Regarding Trade Secrets

“Trade secret” means “information, including but not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that:

- (1) is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and

- (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.”

765 ILCS 1065/2(d).

[REDACTED]

However, the mere facts that COMPANY would purchase unstamped cigarettes from an out-of-state affiliate, PROCUREMENT AFFILIATE, whereby COMPANY would then stamp the cigarettes for ultimate distribution on the State of Illinois would not invoke trade secrets. Nor would disclosure that COMPANY and PROCUREMENT AFFILIATE being wholly owned subsidiaries of PARENT COMPANY necessarily raise sensitivity questions.

If you have any questions or require further information, please do not hesitate to contact me.

DEPARTMENT'S RESPONSE:

The Cigarette Tax Act imposes a tax upon persons engaged in business as a retailer of cigarettes in this State at the rate of \$2.98 per package of 20 cigarettes. See 86 Ill. Adm. Code 440.10. The Cigarette Use Tax Act imposes a tax upon the privilege of using cigarettes in this State at the rate of \$2.98 per package of 20 cigarettes. Payment of the tax must be evidenced by a stamp affixed to each original package of cigarettes. See 86 Ill. Adm. Code 440.20. The Cigarette Tax is collected up front from retailers by licensed distributors. It is the duty of each distributor to collect the tax from the retailer at or before the time of sale, to affix the required stamps and to remit the tax collected from retailers to the Department. See 86 Ill. Adm. Code 440.10. Severe penalties may be incurred for noncompliance. See 86 Ill. Adm. Code 440.50.

Under the Cigarette Tax Act, a “Retailer” means any person who engages in the making of transfers of the ownership of, or title to, cigarettes to a purchaser for use or consumption and not for resale in any form, for a valuable consideration. “Distributor” includes any person engaged in the business of selling cigarettes in this State who brings or causes to be brought into this State from without this State any original packages of cigarettes, on which original packages there is no authorized evidence underneath a sealed transparent wrapper showing that the tax liability imposed by this Act has been paid or assumed by the out-of-State seller of such cigarettes, for sale or other disposition in the course of such business. See 86 Ill. Adm. Code 440.30. The Department will sell tax stamps only to licensed distributors. See 86 Ill. Adm. Code 440.50. Prior to shipment to a secondary distributor or an Illinois retailer, a stamp shall be applied to each original package of cigarettes sold to the secondary distributor or retailer. 35 ILCS 130/3. Section 3 of the Cigarette Tax Act provides:

Each distributor of cigarettes, before delivering or causing to be delivered any original package of cigarettes in this State to a purchaser, shall firmly affix a proper stamp or stamps to each such package, or (in case of manufacturers of cigarettes in original packages which are contained inside a sealed transparent wrapper) shall imprint the required language on the original package of cigarettes beneath such outside wrapper, as hereinafter provided.

The Department has stated in the past that the term “purchaser” used in this context is the end user and not another distributor who intends to resell the cigarettes. When a manufacturer sells cigarettes to a licensed distributor, it is not required to imprint the required language beneath the outside sealed wrapper or affix a tax stamp to each original package of cigarettes. This interpretation is consistent with additional provisions contained in Section 3:

A licensed distributor may ship or otherwise cause to be delivered unstamped original packages of cigarettes in, into, or from this State. A licensed distributor may transport unstamped original packages of cigarettes to a facility, wherever located, owned or controlled by such distributor; however, a distributor may not transport unstamped original packages of cigarettes to a facility where retail sales of cigarettes take place or to a facility where a secondary distributor makes sales for resale.

A discount is allowable to distributors at the time of purchasing stamps during any year commencing July 1 and ending the following June 30 equal to 1.75% of the amount of the tax payable under the Cigarette Tax Act up to and including the first \$3,000,000 paid by the distributor to the Department during any such year and 1.5% of the amount of any additional tax paid by the distributor to the Department during any such year. Two or more distributors that are owned or controlled by the same interests shall be treated as a single distributor for the purpose of computing the discount. See 86 Ill. Adm. Code 440.90; 35 ILCS 130/2(I).

Every distributor who is required to procure a license under the Act and who purchases cigarettes for shipment into Illinois from a point outside this State shall procure invoices in duplicate covering each shipment, shall make the invoices available for inspection upon demand by a duly authorized agent or employee of the Department, and shall, if the Department so requires, furnish one copy of each invoice to the Department upon request. See 86 Ill. Adm. Code 440.110.

Any licensed distributor that ships or otherwise causes to be delivered unstamped original packages of cigarettes into . . . this State shall ensure that the invoice or equivalent documentation and the bill of lading or freight bill for the shipment identifies the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity by brand style of the cigarettes so transported.

See 35 ILCS 130/3. Administrative and criminal penalties are available for noncompliance with these record keeping provisions. See 86 Ill. Adm. Code 440.110.

Every distributor of cigarettes must keep within Illinois, at his or her licensed address, complete and accurate records of cigarettes held, purchased, manufactured, brought in or caused to be brought in from without the State, and sold or otherwise disposed of, and shall preserve and keep within Illinois at his licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a return is required of all cigarettes on hand and of all cigarette revenue stamps, both affixed and unaffixed, and other pertinent papers and documents relating to the manufacture, purchase, sale or disposition of cigarettes. 35 ILCS 130/11. These books and records must be preserved for a period of at least 3 years after the date of the documents, or the date of the entries appearing in the records, whichever is later. A distributor's records of a particular purchase from a manufacturer or distributor shall include:

- A) A copy of the distributor's purchase order (if any) to the manufacturer or distributor;
- B) the manufacturer's or distributor's invoice to the distributor in duplicate (see subsection (b)(1));
- C) a bill of lading or waybill pertaining to the shipment covered by the invoice;
- D) the receiving record showing the date when the cigarettes were received by the distributor; and
- E) evidence of payment by the distributor to the manufacturer or distributor.

See 86 Ill. Adm. Code 440.110.

Section 3 of the Cigarette Tax Act further provides that a "distributor may apply tax stamps only to original packages of cigarettes purchased or obtained directly from an in-state maker, manufacturer, or fabricator licensed as a distributor under Section 4 of this Act or an out-of-state maker, manufacturer, or fabricator holding a permit under Section 4b of this Act."

Company is a licensed distributor of cigarettes operating a distribution center in Illinois. Company is acting as a distributor in that it is in the business of selling cigarettes in this State and is bringing or causing to be brought into this State from without this State original packages of unstamped cigarettes for sale or other disposition in the course of their business of selling cigarettes. Company affixes the required tax stamps prior to sale to a secondary distributor or a retailer for sale to a purchaser for use or consumption.

Procurement Affiliate is in the business of bringing or causing to be brought into this State from without this State original packages of unstamped cigarettes for sale or other disposition in the course of their business and is a licensed distributor in this State. Procurement Affiliate operates two consolidation warehouses, both located outside of this State. Procurement Affiliate procures cigarettes from manufacturers of cigarettes that are permitted under 35 ILCS 130/4b.

Parent Company controls and owns 100 percent ownership interest in its subsidiaries, Company and Procurement Affiliate. The Cigarette Tax Act contemplates, and the Department has treated, two or more distributors that are owned or controlled by the same interests as a single distributor. See 86 Ill. Adm. Code 440.90; 35 ILCS 130/2(I). Because of this common ownership, when Procurement Affiliate procures cigarettes directly from an out-of-State manufacturer permitted under Section 4b of the Cigarette Tax Act, it may sell and transfer those cigarettes to Company for proper stamping in Illinois.

In compliance with Section 3 of the Cigarette Tax Act, Company will apply tax stamps only to original packages of cigarettes purchased or obtained directly from an out-of-State manufacturer holding a permit under Section 4b of this Act under the presented arrangement. Company and Procurement Affiliate, both 100% owned by Parent Company, will ship or otherwise cause to be delivered unstamped original packages of cigarettes into this State and transport unstamped original packages of cigarettes to Company's distribution center in Illinois. None of the unstamped original packages of cigarettes will be delivered to a facility where retail sales of cigarettes take place or to a facility where a secondary distributor makes sales for resale.

Company and Procurement Affiliate must file returns in accordance with 86 Ill. Adm. Code 440.100 and 35 ILCS 130/9. Company and Procurement Affiliate must also keep complete books and records in accordance with 86 Ill. Adm. Code 440.110 and provide these books and records to any duly authorized agent or employee of the Department upon request. These books and records must demonstrate to the Department that the cigarettes at issue were procured by the Procurement Affiliate directly from the out-of-State manufacturer permitted under Section 4b before delivery or shipping to Company in Illinois.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

COMPANY/NAME

March 7, 2024

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I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, 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
Chairman, Private Letter Ruling Committee

SJM:AKO