

ST 13-0029-GIL 06/10/2013 CLAIMS FOR CREDIT

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. No credit shall be given the taxpayer unless the taxpayer shows that he or she has borne the burden of the tax or has unconditionally repaid the amount of the tax to the purchaser from whom it was collected. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

June 10, 2013

Dear:

This letter is in response to your letter dated October 10, 2012, in which you request 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:

This letter serves as a request for a private letter ruling from the state of Illinois regarding Sales Tax Refunds for sales to customers where an exemption certificate is provided after the sale has occurred.

Facts of the situation:

We (COMPANY and its affiliates) bill our customers for all applicable costs and taxes at the time of the sale. However there are times when the customer does not tell us they are exempt or provide the appropriate exemption certificate at the time of the sale. Many times the customers will short pay the invoice by the amount of the taxes and provide us with the appropriate exemption certificate or call one of our customer support centers, provide a certificate and request a refund of all applicable taxes. The time period for these requests is varied from several years to several months within the current calendar year. Our current procedure is to verify the accuracy of the certificate for the period and grant the refund (if the invoice was paid in full) or offset the refund against the current liabilities (in the case where we have already paid the taxes to the state and the customer short paid the invoice).

Either way, these processes have caused an undue administrative burden upon the taxpayer and we are requesting a ruling from each state that will facilitate the process for the taxpayer, its customers and mitigate work the state would have to do on this issue. The taxpayer suggests the following procedure: (1) limit the time period of all refunds to 90 days from the date of the invoice (this would be the majority of the

requests we receive), as the customer should know if they are exempt at the time of sale and should have the appropriate certificate with them when the purchase is made. (2) if the customer fails to provide a certificate at the time of sale, they are required to pay the invoice in full and provide the appropriate exemption certificate to the taxpayer. (3) the taxpayer will review the certificate to ensure it is applicable for the time period and process the appropriate refund to the taxpayer and make the adjustment on the next tax return. (4) for requests outside of this period, the customer will work with the taxpayer to complete the necessary forms for the state and review the accuracy of the refund claim. Once that is done, the customer will file the refund request with the state thus shifting the administrative time and effort to the customer thus allowing the taxpayer to focus on the more value added tasks associated with compliance.

Based on the above facts and due diligence that was performed by the taxpayer, we believe the suggested process would be beneficial to all parties involved. COMPANY takes its tax compliance responsibility seriously and wants to ensure we are compliant with the states on this issue, therefore we respectfully request a letter ruling and guidance on this specific issue. Please send all correspondence relating to this issue to my attention at XXX.

DEPARTMENT'S RESPONSE:

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. See 86 Ill. Adm. Code 130.1501. Please note that only persons who have actually paid tax to the Department can file a claim for credit. No credit shall be given the taxpayer unless the taxpayer shows that he or she has borne the burden of the tax or has unconditionally repaid the amount of the tax to the purchaser from whom it was collected. In other words, if a purchaser has paid tax to his supplier/retailer, only that supplier/retailer can file a claim for credit.

The supplier must first refund tax money paid by the purchaser before proceeding with the claim. Once the supplier has done this, he or she must apply for the credit in the manner described in the regulation. Suppliers/retailers are not required by law to apply for such credits; rather, this procedure is voluntary. Whether or not the supplier refunds the tax paid and files a claim for credit with the Department is a private matter between the supplier and the purchaser.

In the scenario described in your letter, after COMPANY makes the appropriate refund to its customer, COMPANY is not authorized "make the adjustment on the next tax return." Rather, COMPANY is required to file a claim for credit in accordance with 86 Ill. Adm. Code 130.1501. Further, only COMPANY can file for a claim for credit or refund. COMPANY's customers cannot file claims for credit or refund directly with the Department based upon tax that was paid by COMPANY to the Department. No mechanism exists under Illinois sales tax laws for customers to make such claims directly with the Department unless the customer is the one that remitted the tax directly to the Department.

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.

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Sincerely,

Samuel J. Moore
Associate Counsel