

Only the Board of Appeals has the authority to abate penalty and interest. (See 86 Ill. Adm. Code 210.120.) (This is a GIL.)

August 27, 2015

Dear Mr. XXXX:

This letter is in response to your Consumer Complaint dated July 27, 2015, 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:

I filed to have a boat I purchased registered with IL DNC. They returned my application after a month and stated I needed to file to pay taxes. I paid the taxes and refilled for registration. In July the IL IRS sends me a bill for a penalty of \$42 on a tax of \$106 that I paid to them for the boat sales tax.

I would like to have the penalty removed. I was not aware that I needed to pay taxes on my boat, I did not have to do so the last time I purchased a boat from a private party. I paid the tax as soon as I was made aware that it was due. I am an honest citizen who tried to do the right thing. I already paid 5% income taxes on the money I earned to buy the boat. Then I paid 6.25% sales tax on the purchase price of the boat. Now I am being penalized an additional 3% for being 30 days late on a tax I did not even know I owed. I paid the tax before the IRS requested it, and as soon as I could. The penalty as a afterthought it[sic] not warranted. There was no intent to defraud or deny the tax due.

DEPARTMENT’S RESPONSE:

Sales Tax:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling at retail tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

A person does not incur Retailers' Occupation Tax liability on the gross receipts from an isolated or occasional sale. See 86 Ill. Adm. Code 130.110 regarding "Occasional Sales." Consequently, the purchaser of that tangible personal property does not incur a corresponding Use Tax liability on that purchase. See 86 Ill. Adm. Code 150.101(d). As a general proposition, the occasional sale exemption is only available when a person (as defined in Section 1 of the Retailers' Occupation Tax Act, 35 ILCS 120/1) purchases an item and then, after using the item, disposes of it by selling it. See 86 Ill. Adm. Code 130.110. However, the sale will not qualify as an isolated or occasional sale if the person holds himself out as being engaged in the retail sale of that item or similar type of tangible personal property.

Even though a purchaser may not incur a Use Tax liability on a purchase of tangible personal property in an occasional sale transaction, the purchaser of specific types of tangible personal property may still incur a tax liability in this State under the Aircraft Use Tax Law (35 ILCS 157/10-1 et. seq.), Watercraft Use Tax Law (35 ILCS 158/15-1 et. seq.), or Vehicle Use Tax (625 ILCS 3/3-1001 et. seq.).

The Watercraft Use Tax is a privilege tax imposed on the privilege of using, in this State, watercraft acquired by gift, transfer, or non-retail purchase after September 1, 2004. Typically, this tax is incurred when someone buys a watercraft from a private party (a non-retail transaction). The tax is imposed on the use of watercraft in this State regardless of whether the watercraft is actually registered under the Boat Registration and Safety Act. The rate of tax is 6.25% of the purchase price for each watercraft that is subject to tax under the Law. 35 ILCS 158/15-15. However, the purchase price shall not be less than the fair market value of the watercraft on the date the watercraft is purchased or the date the watercraft is brought into the State, whichever is later, unless the purchaser can document that a different value is reasonable. See 86 Ill. Adm. Code 153.110. The Watercraft Use Tax does not contain an exemption for isolated or occasional sales.

Board of Appeals:

Only the Board of Appeals has the authority to abate penalty and interest. Title 86, Section 210.120 of the Illinois Administrative Code governs abatement of penalty and interest. (See 86 Ill. Adm. Code 210.120.) That Section reads as follows:

“Section 210.120 Waiver of Penalty and Interest

- a) A petition for abatement of a penalty or interest may be filed only in cases where the Department has no other established procedure of determination of the issue.
- b) The Board may waive penalty or interest only in the following situations:
 - 1) A late filing due to Reasonable Cause; or
 - 2) Unreasonable delays caused by the Department in any process under the control of the Department; or
 - 3) A timely payment has been made to the Department by a person other than the person who is actually liable for the tax; or
 - 4) The Board has taken special jurisdiction over a case pursuant to Section 210.130; or
 - 5) Where otherwise provided for by statute.
- c) If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, the delay is due to a reasonable cause.
- d) The Board may consider taxpayer's compliance history including previous tax violations with the Department in considering taxpayer's petition for relief based on reasonable cause."

Reasonable cause for the late filing of tax has been found where the late filing is due to some unavoidable circumstance--such as the death of an accountant. Generally, a statement that the taxpayer did not know the tax was due does not constitute reasonable cause for the purpose of abating penalty.

Notwithstanding, taxpayers can petition the Board of Appeals to abate or reduce some of the interest if they desire to do so. The Board of Appeal Petition (BOA-1) is available on our website at www.tax.illinois.gov. Also available on our website are the Illinois Administrative Code Sections 210.101 through 210.135 which are the regulations relating to the Board of Appeals. 86 Ill. Adm. Code 210.101 – 210.135.

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 M. Boggess
Associate Counsel

Cc: Illinois Attorney General – Consumer Protection Division