

This letter concerns returns of merchandise. See 86 Ill. Adm. Code 130.401(b).
(This is a GIL.)

May 17, 2022

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated March 22, 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:

RE: Letter ruling request regarding correctly completing a Form ST-1/ST-2 Sales and Use Tax and E911 Surcharge Return and Forms ST1-X/ST-2X Amended Sales and Use Tax and E911 Surcharge Return with regard to negative numbers.

Dear Legal Counsel:

I am writing on behalf of taxpayer COMPANY ("COMPANY"), Account ID: #####-#####, EIN # ##-#####. COMPANY is currently under audit with the Illinois Department of Revenue ("ILDOR"). The company has received four separate instructions on how to properly reflect negative numbers on Form ST-1/ST-2 Sales and Use Tax and E911 Surcharge Return ("Form ST- 1/ST-2") and Form ST-1X/ST-2X Amended Sales and Use Tax and E911 Surcharge Return ("ST- 1X/ST-2X) and therefore, I am requesting a letter ruling regarding the correct method to complete a Form ST-1/ST-2 and Form ST1-X/ST-2X with regard to negative numbers. In discussions with our auditors last year, we were informed that ILDOR would be extending the audit period to include returns from January-September 2021, for which COMPANY would be required to submit

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Forms ST-1X and ST-2X. Because COMPANY is a retailer which has a three month return policy for merchandise, when customers return merchandise, a negative number appears in our books which we then reconcile. After reviewing the instructions for the Forms ST-1/ST-2 and Forms ST-1X/ST-2X, the instructions are silent on how to accurately reflect negative numbers on the forms. Our auditors instructed over the phone and confirmed via email that while ILDOR does not allow negative numbers on Forms ST-1 and ST-2, COMPANY should complete Forms ST-1X and ST-2X with negative numbers need be, designated with a negative symbol (-) in front of the number in columns 4a and 4b of Form ST-2X. Because of our three month return policy, our auditor also informed us to file additional Form ST-1X/ST-2X for periods in which the sale occurred, showing that there was a return of merchandise for that month. COMPANY acted on its auditors' instructions and on February 17, 2022, the company submitted nine months of amended returns for January - September 2021, using negative numbers on Forms ST-2X on lines 4a and 4b where needed to indicate that a return of merchandise occurred in that jurisdiction.

Upon receipt of our amended returns by ILDOR later in the month, I spoke to a Revenue Tax Specialist III handling our account, who informed me that, "We cannot accept negative figures on an original or amended Sales and Use tax return (ST-1 & ST-1-X). In order to receive credit for a returned merchandise, the period which the sale(s) was originally reported on must be amended with the corrected figures for the month. The receipts/tax will need to be adjusted to the updated sales figures after the returned merchandise was processed." I informed her of the instructions that we received from our auditors and that her answer begged the question of how ILDOR would reconcile the adjusted Form ST-1X since it was adjusted but the Form ST-2X was not and therefore, the Form ST-2X totals would not match the totals reflected on the Form ST-1X.

I later called ILDOR customer service, who gave me a third instruction on how to complete Forms ST-1X and ST-2X. ILDOR customer service informed me that in effect the Forms ST-1X/ST-2X "republish" the original Forms ST-1/ST-2 which are stamped as, "Information Only" by the department once an amended form is received. Customer service echoed the Tax Specialist's instructions about negative numbers however, stated that the entire Form ST-2X would need to be completed, even in jurisdictions in which no changes/amendments occurred. This would in effect reconcile the totals in the Form ST-2X and match the totals reflected on the Form ST-1X.

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I informed our Tax Revenue Specialist III regarding Customer Services' response she stated, "We do encourage the entire ST2X return to be filed on an amended, however if we receive an ST2X for just the locations that are being amended we will process the return if enough information is provided. If more information is needed from the taxpayer to complete the amended return, we will contact the taxpayer. The totals on the ST1X will be different once adjustments are made for the negative figures on the ST2X."

In addition, another customer service representative informed me of a fourth method to reflect returned merchandise on Form ST-1 is on Schedule A- Deductions, Section 1: Taxes and miscellaneous deductions, Line 16 Other (including cash refunds, newspapers and magazines, etc.) - Identify below, by noting "returned merchandise," and total of returns for the month. While this appears to be a less laborious method to handle returns than republishing the entire Form ST-2 with a Form ST-2X (which can total up to 50 pages in a single month for COMPANY), it does not however accurately capture that a return of merchandise in January may have been for an item sold in October of the previous year. In addition, if the purpose of "leveling the playing field," is that each jurisdiction gets its fair share of tax monies from remote vendors, simply burying all totaled returned merchandise for the month on Line 16, jurisdictions will be deprived of their share of tax monies.

Please provide me with your ruling as to how to correctly handle this issue where the instructions to Form ST-1/ST-2 and Form ST1-X/ST-2X are silent on how to correctly reflect negative numbers due to returned merchandise.

If you have any questions or require and further information, please do not hesitate to contact me via the contact information provided below.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The tax is measured by the seller's gross receipts from retail sales made in the course of such business. "Gross receipts" means the total selling price or the amount of such sales. The retailer must pay Retailers' Occupation Tax to the Department based upon its gross receipts, or actual amount received, from the sale of the tangible personal property. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property

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that is purchased anywhere at retail from a retailer. See 35 ILCS 105/3; 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.

When a customer returns merchandise to the retailer, the retailer should refund all the sales tax to the customer. 86 Ill. Adm. Code 130.401(b). This would apply in cases where a full refund is provided or only a partial refund is provided. Except as provided in the paragraph below, if a company can document that it returned all the tax to the customer that was paid on the initial purchase, it may deduct all the gross receipts from the original sale on its return for the period in which the refund was provided. See 86 Ill. Adm. Code 130.401(b). If it fails to return all the tax to the customer that was paid on the initial purchase, it may only deduct the amount of gross receipts that correspond to the amount of tax that was refunded. The remainder of the tax that was not returned to the customer represents an over collection of tax. Illinois law requires that all over collections of tax must either be turned over to the Department or refunded to the customer. See 35 ILCS 120/2-40.

When the amounts refunded for returned merchandise being reported for a specific return period exceed the taxpayer's gross receipts for the taxing jurisdiction at issue for that reporting period, a negative balance on the return would result for that taxing jurisdiction. Sellers are prohibited from filing sales tax returns with negative balances for any taxing jurisdiction. If this situation occurs, the taxpayer must file an amended return for the period in which the original sale or sales took place.

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,

Alexis K. Overstreet
Associate Counsel

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