

Except in the case of a fraudulent return or the failure to file a return, the statute of limitations under the Retailers' Occupation Tax Act for the Department to issue a notice of tax liability is 3 to 3.5 years from when the taxable gross receipts were received. Under the Use Tax Act, the statute of limitations runs from when the tax is due and is modified to 6 to 6.5 years in the case of non-filers. 86 Ill. Adm. Code 130.815. (This is a GIL).

May 4, 2023

NAME
COMPANY
ADDRESS

Dear NAME:

This letter is in response to your letter dated January 31, 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 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:

Retailer's Occupation Tax Question.

I have found that there is a 3-year statute of limitations (based on January and July) when a return has been filed. 35 ILCS 120/4

It looks like the statute of limitations for INCOME taxes is six-years if there is a 25% understatement on the return. 35 ILCS 5/905(b).

I cannot find an equivalent 6-year statute of limitations for a 25% understatement that applies for the Retailer's Occupation Tax. Is there a corresponding rule for ROT, or is it only 3-years (assuming a return was filed) no matter what?

May 4, 2023

If there is a 6-year statute applicable to a substantial omission for ROT, please provide the citation of the statute.

Thank you,

After the Department's initial email response, Taxpayer provided the following via email:

Thank you for your reply. My question was more on the state's ability to assess additional tax, it was not on taxpayer's ability to request a refund.

If a taxpayer filed a ROT return with Illinois in DATE and mistakenly underpaid the ROT due by 30%, is the state still able to assess tax for the underpayment, or has the statute of limitations expired?

Thank you,

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 at retail 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.

Pursuant to the Illinois Retailers' Occupation Tax Act, generally, a notice of tax liability must be issued 3 to 3.5 years from when the taxable gross receipts were received. No notice of tax liability shall be issued on and after each January 1 and July 1 covering gross receipts received during any month or period of time more than 3 years prior to such January 1 and July 1, respectively. However, in the case of an amended return, the time period to file a notice of tax liability will be extended to cover not more than 3 years prior to January 1 or July 1 from the date of the filed amended return. See 35 ILCS 120/4; see also 86 Ill. Adm. Code 130.815.

Under the Retailers' Occupation Tax Act, in case of failure to file a return, or in a case of a fraudulent return, there is no statute of limitations. See 35 ILCS 120/4 and 5; see also 86 Ill. Adm. Code 130.815. The same statute of limitations applies under the Use Tax Act, except that, in the case of failure to file a return, there is a six-year statute of limitations and except that the time limitation runs from the date the tax is due instead of when gross receipts are received. 35 ILCS 105/12.

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The statute of limitations for issuance of a notice of tax liability will expire as provided above unless waivers are secured by the Department's Audit Bureau. Assessments cannot be made after the expiration of a statute without waiver.

There is no provision under the Retailers' Occupation Tax Act or the Use Tax Act comparable to the omission of more than 25% of income provision under subsection (b) of Section 905 of the Illinois Income Tax Act. See 35 ILCS 5/905(b).

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,

Kimberly A. Rossini
Associate Counsel

KAR:dlb