

This letter discusses application of the \$100 Uniform Penalty and Interest Act penalty for failure to file zero liability transaction reporting returns (e.g., ST-556 and ST-556-LSE). See 35 ILCS 735/3-3(a-15) and 35 ILCS 120/3. (This is a PLR.)

August 2, 2023

NAME
TAXPAYER REPRESENTATIVE
ADDRESS

Dear NAME:

This letter is in response to your letter dated April 4, 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.

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 COMPANY1, 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 COMPANY1, 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:

As counsel for and on behalf of COMPANY1 (hereinafter referred to as the "Company" and/or "COMPANY1"), and pursuant to Ill. Admin. Code tit. 2, § 1200.110, I am respectfully requesting a private letter ruling regarding the applicability of a \$100 non-filing penalty for failure to file a transaction reporting return under Section 735/3-3(a-15) of the Uniform Penalty and Interest Act ("UPIA"). Please find below the information necessary for the Department of Revenue ("Department") to issue a ruling regarding this issue.

Neither the Company nor any related taxpayer is currently under audit by the Department regarding this issue, nor is this issue pending in litigation in which the Company or any related taxpayer is a named party. To the best of our knowledge, this issue has not been adequately addressed by Illinois case law or the Department's regulations. Furthermore, to the best of our knowledge, the Department has not previously ruled on this issue or a similar issue for the Company or a predecessor, nor has this issue or a similar issue been previously submitted to the Department and withdrawn before a letter ruling was issued.

The tax periods at issue are MONTH YEAR through present.

I. Statement of Facts

COMPANY1 d/b/a COMPANY2 (the "Dealership") is an automobile dealership that maintains its principal office in CITY, Illinois, that sells PRODUCT vehicles to retail purchasers. In addition to motor vehicle sales, the Dealership offers maintenance and repair services to customers.

When a customer has their vehicle serviced by the Dealership, the customer has the ability to rent a motor vehicle from COMPANY1. Motor vehicles that are rented by COMPANY1 are always for periods of one year or less, in accordance with the Automobile Renting Occupation and Use Tax Act ("AROT"), 35 ILCS 155/1 et seq.

COMPANY1 purchases motor vehicles from the Dealership. COMPANY1 does not pay Illinois sales tax when it purchases motor vehicles because it claims Illinois' "sold for rental use" exemption. See 35 ILCS 120/2-5(5) (Illinois exempts motor vehicles purchased for automobile renting, as defined in the AROT).

COMPANY1 is registered for and administers Illinois' AROT. COMPANY1 is not registered with the Department as a retailer.

If the Dealership has a customer who desires to purchase a motor vehicle that is not in the Dealership's inventory, but COMPANY1 owns that vehicle type, the Dealership may purchase the motor vehicle from COMPANY1. The sale transaction from COMPANY1 to the Dealership would be a tax exempt purchase for resale by the Dealership.

COMPANY1'S policies and procedures are to sell motor vehicles only to a person, such as the Dealership, who can properly claim "resale" on its purchase. Because all of COMPANY1'S sales are wholesale sales,

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COMPANY1 does not prepare and file a transaction reporting return when it sells a motor vehicle to the Dealership.

II. Ruling Requested

Company hereby requests a ruling from the Department stating that the Company is not liable for the failure-to-file penalty imposed by 35 ILCS 735/3-3(a-15) if COMPANY1 does not file a transaction reporting return when it sells a motor vehicle to the Dealership, provided that COMPANY1 does not make any retail sales of motor vehicles.

III. Relevant Authorities

The Uniform Penalty and Interest Act, as amended by P.A. 98-425 (effective August 16, 2013), imposed a \$100 penalty for failure to file a transaction reporting return on or before the due date as required by Section 3 of the Retailers' Occupation Tax Act ("ROT") (35 ILCS 120/3) and Section 9 of the Use Tax Act ("UT") (35 ILCS 105/9). This penalty was imposed regardless of whether the return reported any tax due. P.A. 99-335 (effective August 10, 2015) amended the provisions of P.A. 98-425 to impose the \$100 penalty for failure to file a transaction reporting return on or before the due date as required by Section 3 of the ROT Act and Section 9 of the UT Act only if there is no tax due. 35 ILCS 735/3-3(a-15). After amendment by P.A. 99-335, the provision reads:

"A penalty of \$100 shall be imposed for failure to file a transaction reporting return required by Section 3 of the Retailers' Occupation Tax Act and Section 9 of the Use Tax Act on or before the date a return is required to be filed; provided, however, that this penalty shall be imposed only if the return when properly prepared and filed would not result in the imposition of a tax. If such a transaction reporting return would result in the imposition of a tax when properly prepared and filed, then that return is subject to the provisions of subsection (a-10)."

This provision requires the Department to impose this \$100 penalty for each instance in which a retailer makes a sale for which no tax is due but fails to properly report that sale to the Department using Form ST-556, Sales Tax Transaction Return or Form ST-556-LSE, Transaction Return for Leases (with regard to sales for lease).

The Uniform Penalty and Interest Act's \$100 penalty provision is triggered by a failure to file a transaction reporting return "required by Section 3 of the Retailers' Occupation Tax Act." Section 3 of the ROT Act provides

that " ... with respect to motor vehicles ... that are required to be registered with an agency of this State, every retailer selling this kind of tangible personal property shall file, with the Department, upon a form to be prescribed and supplied by the Department, a separate return for each such item of tangible personal property which the retailer sells..." 35 ILCS 120/3 (emphasis added).

A person who sells only titled and registered property exclusively for resale is not considered to be a "retailer" required to report and pay tax using transaction reporting returns. See, *Dearborn Wholesale Grocers, Inc. v. Whitler*, 82 Ill.2d 471 (1980). Further, if a person sells merchandise at retail other than titled and registered property (e.g., a person required to file Form ST-1, Sales and Use Tax and E911 Surcharge Returns), and such person also sells titled and registered property exclusively for resale, then that person would not be a "retailer selling this kind of tangible personal property" (i.e., a retailer of motor vehicles that are required to be registered with an agency of the State) and, accordingly, would not be required to report and pay tax using transaction reporting returns.

Accordingly, if a company sells motor vehicles exclusively for resale and not at retail and it sells no other tangible personal property, then the sales of motor vehicles for resale are not required to be reported on transaction reporting returns and, as such, no penalty is imposed under the UPIA for failure to file transaction reporting returns. Further, if a company sells merchandise at retail other than titled and registered property (i.e., a company that is registered to file, and does file, Form ST-1, Sales and Use Tax and E911 Surcharge Returns), and also sells titled and registered property exclusively for resale (i.e., no retail sales of titled and registered property), then the sales of motor vehicles for resale are not required to be reported on transaction reporting returns and, as such, no penalty is imposed under the UPIA for failure to file transaction reporting returns.

IV. Analysis

For purposes of the \$100 penalty for failure to file zero liability transaction reporting returns, COMPANY1 maintains, and we concur, that COMPANY1 is not a "retailer selling this kind of tangible personal property" (i.e., motor vehicles ... that are required to be registered with an agency of this State) because it is not registered with the Illinois Department of Revenue as a retailer of titled and registered property, and it does not make retail sales of titled and registered property. As such, COMPANY1 is not required to report and pay tax using transaction reporting returns.

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For the reasons discussed above, we respectfully request the Department to issue a private letter ruling to COMPANY1 that it is not liable for the \$100 penalty imposed by 35 ILCS 735/3-3(a-15) if it does not file transaction reporting returns. We note that COMPANY1'S facts are comparable to those set forth in the Department's information letter GIL ST-17-0001.

DEPARTMENT'S RESPONSE:

The Uniform Penalty and Interest Act, as amended by P.A. 98-425 (effective August 16, 2013), imposed a \$100 penalty for failure to file a transaction reporting return on or before the due date as required by Section 3 of the Retailers' Occupation Tax Act (35 ILCS 120/3) and Section 9 of the Use Tax Act (35 ILCS 105/9). This penalty was imposed regardless of whether the return reported any tax due. P.A. 99-335 (effective August 10, 2015) amended the provisions of P.A. 98-425 to impose the \$100 penalty for failure to file a transaction reporting return on or before the due date as required by Section 3 of the Retailers' Occupation Tax Act and Section 9 of the Use Tax Act only if there is no tax due. 35 ILCS 735/3-3(a-15). After amendment by P.A. 99-335, the provision reads:

(a-15) A penalty of \$100 shall be imposed for failure to file a transaction reporting return required by Section 3 of the Retailers' Occupation Tax Act and Section 9 of the Use Tax Act on or before the date a return is required to be filed; provided, however, that this penalty shall be imposed only if the return when properly prepared and filed would not result in the imposition of a tax. 35 ILCS 735/3-3(a-15).

This provision requires the Department to impose this \$100 penalty for each instance in which a retailer makes a sale for which no tax is due but fails to properly report that sale to the Department using Form ST-556, Sales Tax Transaction Return or Form ST-556-LSE, Transaction Return for Leases (with regard to sales for lease).

The Uniform Penalty and Interest Act's \$100 penalty provision is triggered by a failure to file a transaction reporting return "required by Section 3 of the Retailers' Occupation Tax Act." Section 3 of the Retailers' Occupation Tax Act provides that "... with respect to motor vehicles ... that are required to be registered with an agency of this State, every retailer selling this kind of tangible personal property shall file, with the Department, upon a form to be prescribed and supplied by the Department, a separate return for each such item of tangible personal property which the retailer sells...." 35 ILCS 120/3. For purposes of this \$100 penalty for failure to file zero liability transaction reporting returns, it is the Department's position that a "retailer selling this kind of tangible personal property" means a person registered with the Illinois Department of Revenue as a retailer of titled and registered property who is required to report and pay tax using transaction reporting returns (e.g., ST-556 and ST-556-LSE). A person who

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sells only titled and registered property exclusively for resale is not considered to be a retailer required to report and pay tax using transaction reporting returns. See *Dearborn Wholesale Grocers, Inc. v. Whitler*, 82 Ill.2d 471 (1980). In addition, it is the Department's position that a person who sells merchandise at retail other than titled and registered property (i.e., a person required to file Form ST-1, Sales and Use Tax and E911 Surcharge Returns) and who also sells titled and registered property exclusively for resale is not considered to be a retailer required to report and pay tax using transaction reporting returns.

This means that, if, for example, a company sells motor vehicles exclusively for resale and not at retail and it sells no other tangible personal property, then the sales of motor vehicles for resale are not required to be reported on transaction reporting returns and no penalty is imposed under the Uniform Penalty and Interest Act for failure to file transaction reporting returns. This also means that, if, for example, a company sells merchandise at retail other than titled and registered property (i.e., a company that is registered to and does file Form ST-1, Sales and Use Tax and E911 Surcharge Returns) and also sells titled and registered property exclusively for resale (i.e., no retail sales of titled and registered property), then the sales of motor vehicles for resale are not required to be reported on transaction reporting returns and no penalty is imposed under the Uniform Penalty and Interest Act for failure to file transaction reporting returns.

It is important to note, however, that if a company makes any retail sales of titled and registered property in Illinois, then all sales of titled and registered property in Illinois must be reported on transaction reporting returns, including sales for resale. This results from the requirement in the Retailers' Occupation Tax Act that "...retailers selling this kind of tangible personal property shall file, with the Department, upon a form to be prescribed and supplied by the Department, a separate return for each such item of tangible personal property which the retailer sells...." 35 ILCS 120/3. Failure of these retailers to file returns reporting sales for resale is subject to the \$100 penalty imposed under subsection (a-15) of Section 3 of the Uniform Penalty and Interest Act.

Based on the facts contained in your letter, COMPANY1 is not liable for the \$100 penalty imposed by 35 ILCS 735/3-3(a-15) if it does not file transaction reporting returns when it sells a motor vehicle for resale to the Dealership, as long as COMPANY1 does not make any retail sales of motor vehicles.

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,

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Samuel J. Moore

Chairman, Private Letter Ruling Committee

SJM:RSW:dlb