

This letter discusses the Motor Fuel Tax Law. See 86 Ill. Adm. Code 500. (This is a GIL).

November 16, 2023

NAME
COMPANY
ADDRESS

RE: Motor Fuel Tax

Dear NAME:

This letter is in response to your letter dated April 28, 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:

I represent a company located outside of Illinois (“Company”) and, on behalf of Company, am requesting a General Information Letter regarding the tax treatment in the scenario described below.

FACTS

Company is incorporated in the State of California. Company manages a mobile app for independent owner-operator truck drivers and for small fleets (collectively, the “operator(s)”). The app is free to download, free to use after download, and otherwise does not charge any fees.

The app allows operators to purchase fuel at a discounted price from specified fuel stops. The fuel is available to operators at a discounted price because Company partners with fuel stops, who want to

earn more business from operators and who are willing to sell the fuel to operators at a discounted price.

Operators interested in the discounted fuel price must download the app. When an operator stops at a qualifying stop, which has partnered with Company, the operator opens the app and selected [sic] the fuel stop where they are purchasing fuel.

The app then generates a fuel code, which is a numeric code unique to that operator and that fuel stop. The operator shows the code to the fuel stop clerk, who verifies the operator has the Company's app. From there, the pump is turned on for the operator to pump the fuel. Once the fuel is pumped, the app charges the debit or credit card on file, and the operator can either obtain an emailed receipt or paper receipt from the stop.

Although the app provides operators with access to discounted fuel, Company does not sell fuel to operators. Rather, the fuel stops sell fuel to the operators and receive the proceeds from the sale. The fuel stops also pay all applicable fuel tax on a per gallon basis; and collect, report, and remit all applicable sales tax. Company makes its money solely on commissions paid by the fuel stops when operators use the app to purchase fuel from the stop.

Moreover, Company does not purchase fuel, does not distribute fuel; does not receive fuel; does not import fuel; does not supply fuel; does not use fuel; and does not produce, refine, blend, compound, or manufacture fuel. Nor does Company maintain or possess any inventory of fuel in storage.

REQUEST

Illinois imposes a motor fuel tax on the privilege of engaging in the privilege of engaging in the business of selling motor fuel as a retailer or reseller on all motor fuel used in motor vehicles operating on the public highways and recreational type watercraft operating upon the waters. 35 ILCS 505/2 Sec. 2(c). Company does not appear to be liable for motor fuel tax under this statutory provision because Company is not selling fuel as a retailer or reseller in Illinois. Along with Company not meeting the statutory provisions, the fuel stops pay all applicable fuel tax on a per gallon basis.

Illinois also imposes a motor fuel tax on the "receiver" of motor fuel. 35 ILCS 505/2(a). Company does not appear to be liable for motor fuel

tax under this statutory provision because Company is not a “receiver”, “distributor,” or “supplier” as it does not transport or receive fuel; and does not produce, refine, blend, compound, or manufacture motor fuel. 35 ILCS 505/1.2; 35 ILC 505/1.14; 35 ILCS 505/1.20. Along with Company not meeting the statutory provisions, the fuel stops pay all applicable fuel tax on a per gallon basis.

Finally, under Illinois law, it appears that only “distributors,” “suppliers,” “receivers,” and “blenders,” must be licensed for motor fuel tax. Reg. 500, Section 500.201. Company does not appear to need a license for motor fuel tax, as it is not a “distributor,” “supplier,” “receiver,” and “blender.” 35 ILCS 505/1.2; 35 ILCS 505/1.5-1.6; 35 ILCS 505/1.14; 35 ILCS 505/1.20.

Nevertheless, please advise whether the Department believes Company is liable for motor fuel tax, Company is responsible for remitting motor fuel tax, and Company is required to obtain any state licenses for motor fuel tax.

CONCLUSION

Your advice on this matter is greatly appreciated. If you should have any questions, please do not hesitate to call me at PHONE.

DEPARTMENT’S RESPONSE:

The Motor Fuel Tax is imposed “on the privilege of operating motor vehicles upon the public highways and recreational-type watercraft upon the waters of this State”. 35 ILCS 505/2. The incidence of the tax is imposed on the person using or consuming motor fuel while operating a motor vehicle on public highways.

A distributor who sells or distributes any motor fuel, which he is required by Section 5 of the Law to report to the Department when filing a return, shall collect at the time of such sale and distribution, the amount of tax imposed under the Law on all such motor fuel sold and distributed, and at the time of making a return, the distributor shall pay to the Department the amount so collected, less a discount allowed for collecting and remitting the tax, to the Department. 35 ILCS 505/6.

A supplier, other than a licensed distributor, who sells or distributes any special fuel, which he is required by Section 5a of the Law to report to the Department when filing a return, shall collect at the time of such sale and distribution, the amount of tax imposed under the Law on all such special fuel sold and distributed, and at the time of making a return, the supplier shall pay to the Department the amount so collected, less

a discount allowed for collecting and remitting the tax, to the Department. 35 ILCS 505/6a. "Special Fuel" includes diesel fuel. 35 ILCS 505/1.13 and 2(b).

In each subsequent sale of motor fuel or special fuel on which the amount of tax imposed under the Law has been collected by a distributor or supplier as provided in Section 6 and 6a, respectively, the amount so collected shall be added to the selling price, so that the amount of tax is paid ultimately by the user of the motor fuel.

A "reseller" is any person, other than a retailer, who purchases motor fuel for resale to a person, and on which tax has been paid. 35 ILCS 505/1.21. Although the Law does not define "retailer", a retailer generally means and includes persons engaged in the business of making sales at retail to users or consumers.

Recently, the Department has encountered a number of arrangements where companies have provided new services to established businesses through the use of apps downloaded on mobile devices of consumers seeking, for example, hotel rooms, vacation rentals, and parking spaces. Because these new arrangements are unique, the Department requires a complete and thorough explanation of the contractual relationship between the parties.

Based on the limited information provided in your letter, the Department cannot determine the exact nature of the arrangement between a fuel stop and the Company. Your letter states that, "[o]nce the fuel is pumped, the app charges the debit card or credit card on file". Your letter also states the fuel stops receive the proceeds from the sale. As noted above, without reviewing the actual contractual arrangements between the Company and the fuel stops, the Department cannot provide an opinion in a GIL whether the Company is liable for motor fuel tax, the Company is responsible for remitting motor fuel tax, or Company is required to obtain any state licenses for motor fuel tax.

Section 2(c) that you reference in your letter is no longer relevant. 35 ILCS 550/2(c). The limited purpose of Section 2(c) was to tax the motor fuel already in the possession of resellers and retailers when the rates of tax on fuels were increased on August 1, 1989, and on January 1, 1990.

Sales of motor fuel and special fuel at retail are subject to the Retailers' Occupation Tax. 35 ILCS 120/2-10. A proper understanding of the relationship between your client and fuel stops is necessary to determine their obligations under the Retailers' Occupation Tax Act. Retailers and resellers of motor fuel are required to register under the Act. The Act also imposes additional obligations on resellers and retailers of motor fuel. See 35 ILCS 120/2d, 2e, 2f, and 2g.

You may submit a request for a binding private letter ruling. Please review the requirements for obtaining a private letter ruling at 2 Ill. Adm. Code 1200.110.

COMPANY/NAME

Page 5

November 15, 2023

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,

Richard S. Wolters
Associate Counsel

RSW:dlb