

This letter concerns payment of interest on credit memorandums issued by the Department. See 86 Ill. Adm. Code 130.1515(c), 140.1415(c), 150.1415(c), and 160.165(c). (This is a GIL.)

April 11, 2008

Dear Xxxxx:

This letter is in response to your letter dated April 4, 2007, 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:

We currently have a credit memorandum with the State of Illinois. We've been informed by the Supervisor in the Sales Tax Processing Division there are not enough funds in the 'Refund Account' to reimburse the monies due us. This inquiry is a request for determination as to whether interest is to continue to be accrued as a result of the lack of funds to reimburse.

If someone could please research this and provide the code section which references the findings that would be most appreciated. Thanks for your help in this matter.

DEPARTMENT'S RESPONSE:

Section 6 of the Retailers' Occupation Tax Act states that any credit or refund that is allowed under Section 6 shall bear interest at the rate and in the manner specified in the Uniform Penalty and Interest Act. 35 ILCS 120/6. Under the Uniform Penalty and Interest Act, the rate of interest paid on overpayments shall be determined by the Department as provided in Section 3-2(a) of that Act. 35 ILCS 735/3-2. The determined rate of interest to be paid on overpayments is the underpayment rate established under Section 6621 of the Internal Revenue Code. 86 Ill. Adm. Code 700.210(a).

Interest on amounts refunded or credited pursuant to the filing of an amended return or claim for refund shall be determined from the due date of the original return or the date of overpayment,

whichever is later, to the date of payment by the Department without regard to processing time by the Comptroller or the date of credit by the Department or without regard to the date on which the credit is applied to the taxpayer's account. 35 ILCS 735/3-2; 86 Ill. Adm. Code 700.230(f). When a claim that is allowed is paid by means of a credit memorandum instead of by means of a cash refund, the claim will be considered to have been paid when the credit memorandum is issued by the Department to the claimant, and no interest will be allowed or paid by the Department for any period subsequent to the date of issuance, even if the claimant does not use or assign the credit memorandum immediately after it is issued. 86 Ill. Adm. Code 130.1515(c), 140.1415(c), 150.1415(c), and 160.165(c).

In case the Department determines that the claimant is entitled to a refund, such refund shall be made only from such appropriation as may be available for that purpose. 86 Ill. Adm. Code 130.1510. If appropriated funds are not available, the claimant has the option of selling or assigning the credit memorandum. 35 ILCS 105/19, 86 Ill. Adm. Code 150.1405; 35 ILCS 110/17; 86 Ill. Adm. Code 160.155; 35 ILCS 115/17, 86 Ill. Adm. Code 140.1405; 35 ILCS 120/6, 86 Ill. Adm. Code 130.1505.

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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk