

This letter references an earlier letter regarding the rolling stock general exemption. 86 Ill. Adm. Code 130.340. (This is a GIL.)

April 21, 2008

Dear Xxxxx:

This letter is in response to your letter dated January 19, 2007, in which you request information. We apologize for the delay in responding to your inquiry. 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](http://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 write to respectfully request reconsideration and/or clarification of the Department's informal guidance provided in the enclosed June 5, 2006 General Information Letter ('GIL'). I interpret the Department position to mean a through bill of lading is the controlling test for determining whether a single state, Illinois move is an interstate move, as opposed to an intrastate move. Specifically the GIL requires the initial documentation, i.e., the bill of lading, to document the final Illinois destination point for out-of-state cargo moved through an Illinois warehouse via two separate moves for the single state, Illinois move to qualify as an interstate move under the rolling stock exemption. Conversely, two identical cargo moves under two separate bills of lading convert the single state, Illinois move into an intrastate move ineligible for the rolling stock exemption under the example in the GIL. We see no legal basis for the distinction as explained below.

Notably, the GIL cites no federal or Illinois case law in support of the Department's position. Based on my research of the federal authorities, the Department's reliance on the shipping documents is misplaced. Under well-settled federal case law, a through bill of lading is not dispositive of the nature of a single state move, but merely represents one of many factors evidencing a shipper's fixed and persisting intent to move out-of-state cargo in a single state, interstate move to an in-state destination following temporary storage at an in-state warehouse.

I trust you will find the following explanation taken from federal case law helpful. In Armstrong World Industries, Inc., 2 I.C.C. 2d 63 (1986), the Interstate Commerce Commission, the federal agency formerly in charge of regulating interstate motor carriers, stated 'it is well settled that characterization of transportation between two points in a state as interstate or intrastate in nature depends on the 'essential character' of the shipment. (citations omitted). Crucial to a determination of the essential character of a shipment is the shipper's fixed and persisting intent at the time of the shipment. (citations omitted). This intent is ascertained from all the facts and circumstances surrounding the transportation. For example, the presence of common incidents of through carriage, such as through billing, uninterrupted movement, continuous possession by the carrier, or unbroken bulk may indicate a through interstate shipment. However, the presence of these elements is not a prerequisite to a finding of such movement.' (Emphasis added). Under federal law, a through bill of lading serves only as evidence of a shipper's fixed and persisting intent to move cargo in single state interstate move.

In my previous letter requesting the ruling, I provided federal case law supporting the shipper's fixed and persisting intent under a variety of factual scenarios. None of those federal cases viewed a through bill of lading as dispositive of the interstate nature of a single state move. By establishing a through bill of lading test, the Department overlooks the well settled federal test and embarks upon a rather formalistic test that places the form of the paperwork underlying a single state moves over its substance. My research further reveals no Illinois case law contradicting or even questioning the shipper's fixed and persisting intent test. Absent Illinois legal authority supporting a different test, the Department's internal policy should conform to the well-settled federal case law standards.

A shipper's fixed and persisting intent at the outset of the shipment determines the origin and/or destination point of cargo under the rolling stock exemption at 35 ILCS 120/2-50. Provided the shipper's intent is to move the cargo in interstate commerce, a single state, Illinois move qualifies as a move in interstate commerce even if the move occurs pursuant to a separate bill of lading.

We respectfully request the Department revise and/or clarify its June 5, 2006 GIL by recognizing the shipper's fixed and persisting intent, not a through bill of lading, is the proper test for determining whether a single state, Illinois qualifies as an interstate move under the rolling stock exemption. If you have any questions regarding this matter, please give me a call.

## **DEPARTMENT'S RESPONSE**

We reviewed our previous response to you and decline to revise and/or clarify that response. Please note, as a general proposition, a GIL is not the appropriate forum in which to debate a particular factual situation. Rather, GILs are designed to provide general background information and contain general discussions of tax principles or applications. 2 Ill. Adm. Code 1200.120(b). 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).

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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