

This letter describes the circumstances under which a quarter monthly filer may change his filing status. See 35 ILCS 120/3 and 86 Ill. Adm. Code 130.535. (This is a GIL.)

August 10, 2006

Dear Xxxxx:

This letter is in response to your letter dated April 20, 2006, 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:

I am writing to you in hopes of finding a solution to a very difficult situation imposed on the above taxpayer. The company sells fine art. Their sales do not occur on a regular basis. In 2005, they had fifty-one sales on which they collected sales tax in excess of \$680,000.

As a result of your Section 120(3), the Department has demanded that they make quarter-monthly deposits. The structure of this requirement is totally not workable. You require either 22-1/2 % of the same month prior year's liability, or 27-1/2% of the current month's liability to be paid quarter-monthly. If they collect no sales tax all month, and collect \$50,000 in tax on the last day of the month, they will have a penalty. This pattern occurs frequently.

They are not seasonal and, hopefully, their business has not decreased.

They would be willing to remit as they collect, such as you do with cars, trucks, boats, planes, and RVs, or remit quarter-monthly on what they have collected for the week, or remit like withholding when the tax collected exceeds a certain threshold. Any of these would be workable and fair.

Hopefully, you can offer a solution.

Please feel free to contact me if you have any questions.

DEPARTMENT'S RESPONSE:

Section 3 of the Retailers' Occupation Tax Act provides that ". . . if the taxpayer's average monthly [sales] tax liability to the Department . . . was \$20,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payment to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred." (35 ILCS 120/3) That Section further provides that ". . . each payment shall be in an amount equal to 22.5% of the taxpayer's actual liability for the month or 25% of the taxpayer's liability for the same calendar month of the preceding year." (See also 86 Il. Admin. Code 130.535(b) and (e)).

If a taxpayer's liability meets the \$20,000 statutory threshold, the taxpayer is required to make quarter monthly payments equal to the lesser of 25% of the taxpayer's liability for the same month in the prior year or 22.5% of the taxpayer's actual liability for the current month.

Persons may stop using the quarter monthly filing schedule under only two circumstances. The first situation is when the taxpayer's average monthly liability to the Department during the preceding 4 complete calendar quarters (excluding the month of highest liability and the month of lowest liability) is less than \$19,000.00 or when the taxpayer's average monthly liability for each calendar quarter of the 4 preceding complete calendar quarter periods is less than \$20,000.

The other circumstance that allows quarter monthly filers to change their filing schedule occurs when the taxpayer can show the Department that a "substantial change" in his business has occurred which causes him to anticipate that his average monthly tax liability for the reasonably foreseeable future will fall below \$20,000. If this change is seasonal, or is not likely to be long-term, the Department must deny the request.

If a taxpayer's average monthly liability exceeds \$20,000 and there has not been a substantial change in the taxpayer's business, then there is not a basis, under the statute, to change the taxpayer's quarter monthly payment status.

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).

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:mks