

ST 13-0017-GIL 03/31/2013 TOBACCO PRODUCTS TAX ACT

This letter discusses the taxation of moist snuff. See 35 ILCS 143/10-10. (This is a GIL.)

March 31, 2013

Dear:

This letter is in response to your letter dated February 13, 2013, 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:

COMPANY and its subsidiaries are seeking clarification regarding the new tax rate imposed upon moist snuff enacted through Senate Bill 2194 which is effective January 1, 2013. According to the Informational Bulletin FY 2013-07, released November 2012, the tax on moist snuff will be \$.30 per ounce.

However, according to the Tobacco Products Tax Act of 1995 §35 ILCS 143/10-10 it states that:

"Beginning on January 1, 2013, the tax rate imposed per ounce of moist snuff may not exceed 15% of the tax imposed upon a package of 20 cigarettes pursuant to the Cigarette Tax Act [35 ILCS 130/1]"

The current tax rate on a pack of 20 cigarettes pursuant to §35 ILCS 130/2 is \$1.98 per pack. Based upon the strict reading of the statutory language above the tax on moist snuff would compute to \$.297 per ounce.

Further guidance on the proper tax rate for moist snuff is needed as we have found no statutory or regulatory language regarding rounding. Furthermore, the rounded up tax of \$.30 per ounce would violate the language provided by the statute noted above as it would exceed the 15% of the cigarette tax for a pack of 20 cigarettes.

Please provide any statutory reference in your response.

DEPARTMENT'S RESPONSE:

P.A. 97-0688, among other things, amended the Tobacco Products Tax Act of 1995 by adding a definition of “moist snuff” and changing the methodology for determining the tax on moist snuff from one based on cost to one based on weight. The Public Act also raised the tax on cigarettes to 99 mills per cigarette, or \$1.98 per package of 20 cigarettes.

Section 10-10 of the Tobacco Products Tax Act of 1995 states:

“. . . a tax is imposed on any person engaged in business as a distributor of tobacco products, as defined in Section 10-5, at the rate of (i) 18% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in this State prior to July 1, 2012 and (ii) 36% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in this State beginning on July 1, 2012; except that, beginning on January 1, 2013, the tax on moist snuff shall be imposed at a rate of \$0.30 per ounce, and a proportionate tax at the like rate on all fractional parts of an ounce, sold or otherwise disposed of to retailers or consumers located in this State. . . .

“Beginning on January 1, 2013, the tax rate imposed per ounce of moist snuff may not exceed 15% of the tax imposed upon a package of 20 cigarettes pursuant to the Cigarette Tax Act.

35 ILCS 143/10-10 (emphasis added).

It is the Department’s position that the tax on moist snuff is currently \$0.30 per ounce. This position is based on the plain reading of the statute. The language establishing the rate at \$0.30 beginning January 1, 2013, is clear and unambiguous. However, if a court was to determine the statute is ambiguous, the Department’s position is also supported by rules of statutory construction.

When construing a statute the courts rely on rules of statutory construction. A court’s “primary objective in interpreting a statute is to ascertain and give effect to the intent of the legislature.” *Solon v. Midwest Medical Records Association*, 236 Ill.2d 433, 440 (2010). The Court will “consider the statute in its entirety, the subject it addresses, and the apparent intent of the legislature in enacting it.” *Id.*

“[I]f a statute is capable of being understood by reasonably well-informed persons in two or more different ways, the statute will be deemed ambiguous. If the statute is ambiguous, the court may consider extrinsic aids of construction in order to discern the legislative intent. We construe the statute to avoid rendering any part of it meaningless or superfluous. We do not depart from the plain statutory language by reading into it exceptions, limitations, or conditions that conflict with the expressed intent.

“We may also consider the consequences that would result from construing the statute one way or the other. In doing so, we presume that the legislature did not intend absurd, inconvenient, or unjust consequences.”

Id. at 440-1 (internal citations omitted).

The Public Act raised the tax on a package of cigarettes to \$1.98 at the same time it raised the tax on tobacco products to 36% of the wholesale price. The tax on moist snuff was changed to a weight-based methodology, and the initial tax on moist snuff was explicitly set at \$0.30. In the future, a limitation was placed on any rate imposed on moist snuff: If the tax on cigarettes is raised, the tax on moist snuff may be raised but may not exceed 15% of the tax imposed upon a package of 20 cigarettes pursuant to the Cigarette Tax Act.

The construction you propose would render the language establishing a rate of \$0.30 beginning January 1, 2013, superfluous and results in an absurd consequence. The Department's position gives meaning to the entire statute and "avoid[s] rendering any part of it meaningless or superfluous."

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