

This letter responds to a survey concerning taxation of vehicles and updates answers to a previous survey. See 86 Ill. Adm. Code 130.605, 150.310, 150.315, 151.101 et seq., and 180.101 et seq. (This is a GIL.)

October 27, 2010

Dear Xxxxx:

This letter is in response to your e-mail dated July 26, 2010 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:

Each year the STATE Department of Revenue requests that your agency complete the attached questionnaires concerning the taxability of various types of motor vehicle transactions within your state. The information we obtain from your response to these questionnaires is beneficial to our Department and to those motor vehicle dealers within our state that make sales to residents of your state.

So that our Department may continue to use and distribute accurate information about the taxability of motor vehicles in your state, we would greatly appreciate your cooperation in completing the attached questionnaires. Please complete the questionnaires even if there have been no changes in your state's tax laws or policies. A copy of the document that we generated from the information we received from your agency last year is attached to this e-mail. Your agency may also want to review this document to note any changes that have occurred from last year to this year.

Thank you very much for your assistance.

DEPARTMENT'S RESPONSE:

The Department cannot approve publications other than those issued by the Department of Revenue. However, we hope the following information will provide sufficient guidance to answer your questions and update our answers to last year's survey questions.

The first part of your questionnaire asks for a response to its questions for 8 different types of vehicles: automobiles, trucks, motor homes, mobile homes, trailers, boats, motorcycles, and off-road vehicles.

1. "Is item taxed under your sales or use tax statutes? YES or NO"

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. (35 ILCS 120/2) The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. (35 ILCS 105/3) Each of the items listed in your questionnaire is subject to the Retailers' Occupation Tax and the Use Tax.

2. "If YES, at what rate?"

The State rate of tax imposed under the Retailers' Occupation Tax Act (35 ILCS 120/2-10) and the Use Tax Act (35 ILCS 105/3-10) is 6.25%. Additional taxes may be imposed by units of local government.

3. "If NO, is this item taxed under another section of your statutes? YES or NO"

Not applicable.

4. "If YES, please explain."

Not applicable.

5. "Does your state exempt occasional or isolated sales between individuals of motor vehicles? YES or NO"

The Retailers' Occupation Tax Act does contain an occasional sale provision, which is discussed at 86 Ill. Adm. Code 130.110. However, the Vehicle Use Tax is imposed on transfers of motor vehicles between private parties (See 86 Ill. Adm. Code 151.101 et seq.), the Watercraft Use Tax is imposed on transfers of certain watercraft between private parties (See 86 Ill. Adm. Code 153.101 et seq.), and the Aircraft Use Tax is imposed on transfers of aircraft between private parties (See 86 Ill. Adm. Code 152.101 et seq.). These taxes imposed on transfers between private parties (non-retailers) do not exempt isolated or occasional sales.

6. "Do your statutes provide for a maximum amount of tax or tax rate? YES or NO"

The State rate of tax imposed under the Retailers' Occupation Tax Act and the Use Tax Act is 6.25%. Additional taxes may be imposed by units of local government. Some local taxes have rate caps, some do not. The rate of tax imposed under the Watercraft Use Tax Law and the Aircraft Use Tax Law is 6.25%. For maximum rates under the Vehicle Use Tax, see 86 Ill. Adm. Code 151.101 et seq.

7. "Do your statutes provide for tax computation after trade-in allowance? YES or NO"

Yes, in retail transactions where the item that is traded-in is of like kind and character as that which is being sold. No, in non-retail transactions. For example, no trade-in allowance is authorized under the Vehicle Use Tax, the Watercraft Use Tax, or the Aircraft Use Tax.

8. **"If a resident of your state purchases and takes possession of a new or used motor vehicle in STATE, to be licensed within 45 days in your state, and pays sales tax to STATE at the rate applicable in your state, not to exceed 6%, would your state recognize sales tax paid in STATE as being lawfully imposed? (SEE s. 212.08(10)(a), F.S., on the second page.)"**

See 35 ILCS 105/3-55(d).

9. **"Are the sales of motor vehicles to military personnel who are residents of your state exempt? YES or NO"**

Please note that military personnel are not generally exempt from taxation in Illinois.

10. **"If yes, please explain and/or list statutory or regulatory reference."**

Not applicable.

11. **"If a nonresident military member, who is stationed in your state, purchases and takes possession of a motor vehicle in your state but chooses to title/register the vehicle in his/her home state of record, is the motor vehicle subject to your state's sales tax? YES or NO"**

No, the retailer does not incur Retailers' Occupation Tax if the drive-away permit procedures found at 86 Ill. Adm. Code 130.605(b)(1) are followed. For purposes of the drive-away permit exemption, Illinois considers a member of the military whose home state of record is not Illinois to be a nonresident. To document eligibility for the drive-away permit exemption, the retailer must have the purchaser sign a certification that states: "I, (purchaser), under applicable penalties, including penalties for perjury and fraud, state that I am not an Illinois resident. I understand that if I am a resident of Illinois or use the motor vehicle in Illinois for 30 or more days in a calendar year, I am also liable for tax, penalty and interest on this purchase." (See 86 Ill. Adm. Code 130.605(b)(1)(A)(ii) and 86 Ill. Adm. Code 150.310(a)(7))

12. **"If a nonresident military member is stationed overseas, purchases a motor vehicle while overseas but is subsequently assigned to duty in your state, is the motor vehicle subject to your state's use tax if the nonresident military member chooses to title/register the vehicle in his/her home state of record, YES or NO"**

See 35 ILCS 105/3-70 and 86 Ill. Adm. Code 150.315 concerning nonresident exemptions.

The second part of your questionnaire concerns only the "long-term" lease of motor vehicles.

THE FOLLOWING QUESTIONS PERTAIN TO THE LONG-TERM LEASE OF MOTOR VEHICLES. PLEASE ADD ADDITIONAL COMMENTS AS NEEDED:

1. **"Is the long-term lease (12 months or more) of a motor vehicle taxed under your sales or use tax laws or statutes? YES or NO"**

Except as noted below, the State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. There is an exception to this rule for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq. and 86 Ill. Adm. Code 180.101. This tax is imposed at the rate of 5% of the gross receipts from such business. "Gross receipts" from the renting of tangible personal property or "rent," means the total rental price or leasing price. See also, 86 Ill. Adm. Code 180.120 and 180.125. When automobiles are purchased to be used as rental cars for terms of one year or less, they may be purchased without paying Retailers' Occupation Tax or Use Tax.

2. "If YES, at what rate?"

See answer to question 1 above.

3. "If NO, is the long-term lease of a motor vehicle taxed under another section of your statutes?"

YES or NO

If yes, please explain."

See answer to question 1 above.

4. "If the long-term lease of a motor vehicle is subject to sales tax, is the tax required to be paid 'up front' on the lease? YES or NO

If YES, is the tax lawfully imposed on the lessor or lessee?"

As indicated in the answer to question 1 above, the lease payments on the lease of a motor vehicle for more than one year are not subject to tax in Illinois. However, when the lessor purchases the motor vehicle to lease it for a period greater than one year, the lessor owes Use Tax on its cost price of such property.

5. "If the tax is required to be paid 'up front', and the vehicle leaves your state, is there a prorated credit or refund allowed for taxes previously paid? YES or NO"

No. The tax paid "up front" in this instance is a Use Tax owed by the lessor who is leasing the motor vehicle for a period greater than one year.

6. "If a vehicle that was leased in another state is brought into your state, are the subsequent rental payments subject to sales or use tax? YES or NO"

No. The State of Illinois imposes no tax on rental receipts from the lease of a motor vehicle for more than one year. Consequently, lessees incur no tax liability. However, prior to registering the vehicle, Illinois Use tax must be paid on the motor vehicle. Illinois will give credit for sales or use taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310(a)(3).

7. "If YES, is credit given for tax previously paid to another state on rental payments? YES or NO"

See answer to question 6 above.

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.

Sincerely,

Samuel J. Moore
Associate Counsel