

The Department has no authority to compel the seller to file a claim for credit. Whether the seller files a claim for credit with the Department is a private business matter. See 86 Ill. Adm. Code 130.1501. (This is a GIL.)

July 6, 2022

NAME/ADDRESS

Dear Mr. XXX:

This letter is in response to your letter in which you requested 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 this letter to you because I purchased a used PRODUCT at the COMPANY in March 20##. The vehicle was a PRODUCT MODEL. After I had driven the PRODUCT for about 1 1/2 months, the radiator hose had burst. I took it to my mechanic, and found out there was collision damage that was not properly fixed. It was one of the reasons the hose had burst. Once I heard this, I took it back to the dealership to permanently return the PRODUCT, and cancel my contract. After a few days of me returning the PRODUCT, the dealership agreed to buy back the PRODUCT. However, I was told that I had to pay them for the sales tax before they could cancel the loan contract. The dealership owner said that he was only responsible to pay the loan portion of the contract to pay the bank, but I had to pay the sales tax portion to him. He said it is because once the vehicle is bought, and after so many days, he pays the sales tax. He included that once the sales tax is paid, he will not get the money back from the government. This did not make sense to me then, and it still does not make sense now.

After days of going round and round about the sales tax, I asked him if he could provide me with the law or statute that mandates me to pay the sales tax of the returned vehicle. To this day, he has not provided me with any substantial evidence that proves I had to pay the sales tax. I reached out to the IDOR via email, and was told the answer I am looking needed to come from your department.

With that said, it would be greatly appreciated if you can provide me with some legal information in writing that binds me as the party responsible for paying the sales tax on the returned vehicle to legally cancel my loan contract. Again, I was told the only way I could cancel my contract was to pay the dealership the sales tax first.

Any information you can provide would be greatly appreciated.

DEPARTMENT'S RESPONSE:

You have described a returned merchandise situation. The general rule relating to this situation is set out in the Department's administrative rules at 86 Ill. Adm. Code 130.401(b). This rule provides that:

"Any seller may deduct from his gross receipts any refunds made by him during the preceding return period to purchasers, on account of tangible personal property returned to the seller, in case the seller had theretofore included the receipts from the sale of such tangible personal property in a return made by him, and had paid the tax imposed by the Retailers' Occupation Tax Act with respect to such receipts. However, if the seller collected the Use Tax on such a sale, he should refund such tax to his customer to whom he makes a refund of the selling price."

This general rule regarding refunding tax to customers pertains to all sellers of tangible personal property, including retailers of motor vehicles. Because retailers of motor vehicles do not pay Retailers' Occupation Tax ("sales tax") to the Department on retail sales of motor vehicles with monthly returns, but remit the tax to the Department on a transaction by transaction basis, which transaction return is due not later than 20 days after delivery of the vehicle (see 86 Ill. Adm. Code 130.540), they are unable to take a deduction on the returns that they file with the Department as provided in Section 130.401(b). Instead, for a motor vehicle retailer to get back the tax monies it paid to the Department on a sale it must file a claim for credit with the Department on any transaction for which it is seeking a credit or refund. This procedure is described at 86 Ill. Adm. Code 130.1501. To file this claim, however, if a seller has collected tax from a purchaser, it must first prove to the Department that it has unconditionally repaid the taxes to the purchaser. Please note that the Department has no authority to compel the seller to file a claim for credit. As this regulation explains, this procedure is a matter of

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business between the purchaser and the retailer – the motor vehicle retailer is not required by the tax laws to file a claim for credit.

If a motor vehicle retailer does not agree to file a claim for credit on a given transaction, the purchaser must enforce his or her right to collect the taxes as he or she would any other debt owed to him or her.

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,

Samuel J. Moore
Associate Counsel

SJM:rkn