

This letter responds to a survey concerning taxation of vehicles. (This is a GIL.)

October 4, 2022

NAME/ADDRESS

Dear Mr. XXX:

This letter is in response to your letter dated September 30, 2022, 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:

Each year, the DEPARTMENT publishes information regarding the taxability of the sale or transfer of motor vehicles that are:

- sold in STATE to residents of another state and licensed in the purchaser's home state; and
- purchased in another state and brought into STATE to be licensed in STATE.

This information is beneficial to our Department as well as to motor vehicle dealers within STATE who sell vehicles to residents of your state. To ensure our Department continues to use and distribute accurate information, we are requesting that your agency review the specific information related to your state and let us know of any changes in writing that occurred in the past year or will occur for 2023.

A copy of our publication, PRODUCT_, is attached for your convenience.

This request is for the state of **(state name)** and has been sent to **(name or names)** as the designated contact(s) regarding sales and use tax imposed on PRODUCT. If a contact needs to be updated, added, or

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removed for your state, please include the new contact information in your response.

If you have any questions, please let me know and I will refer them to our sales tax coordinator for response.

Please reply to this email with any updates and/or comments by November 1, 2022. Thank you for your assistance.

DEPARTMENT'S RESPONSE:

The Department cannot approve publications other than those issued by the Department of Revenue. We advise you to consult Illinois statutes and administrative rules, as well as Department publications on these matters. In the interest of limiting the dissemination of incomplete information, we offer the following additional guidance and suggestions.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for the Retailers' Occupation Tax liability incurred on those sales.

Trade-in Credits

Retailers' Occupation Tax is measured by gross receipts from the sale of tangible personal property to end-users. See 35 ILCS 120/2-10. "Gross receipts" is defined as "the total selling price or the amount of such sales." See 35 ILCS 120/1. Use Tax is imposed on "the selling price . . . of the tangible personal property." See 35 ILCS 105/3-10. The Retailers' Occupation Tax Act and Use Tax Act defines "selling price" or the "amount of sale," in relevant part, as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, *but prior to January 1, 2020 and beginning again on January 1, 2022, not including the value of or credit given for traded-in tangible personal property* where the item that is traded-in is of like kind and character as that which is being sold" See 35 ILCS 105/2 and 35 ILCS 120/1, emphasis added. We note, that for sales that occur on or after January 1, 2022, Public Act 102-353, removed the \$10,000 cap on the deduction that may be taken for trade-ins when calculating tax that was added by Public Act 101-31 and was in effect from January 1, 2020 through December 31, 2021.

With respect to trade-in credits, for the sale of a motor vehicle subject to Retailers' Occupation Tax, the retailer is allowed to accept a trade-in to reduce the taxable selling price in accordance with 86 Ill. Adm. Code 130.425. If, however, the motor vehicle is sold for the purpose of simultaneously leasing it for a defined period that is longer than one year, and the transaction otherwise qualifies to use the "selling price" as defined in P.A. 98-628, then no trade-in credit is allowed. For a sale of a motor vehicle between private parties that is subject to tax under 625 ILCS 5/3-1001 et seq. (i.e., a non-retail transaction), a trade-in credit is not allowed. See 86 Ill. Adm. Code 151.101 et seq.

Private Party Sales (Non-Retail Sales)

With respect to "Occasional or Isolated Sales," the State of Illinois imposes a vehicle use tax on private party (non-retail) transactions involving motor vehicles (commonly referred to as the "Private Party Vehicle Use Tax" or "Private Vehicle Use Tax"). See 625 ILCS 5/3-1001 et seq. We note that effective January 1, 2022, Public Act 102-353 modified the Private Vehicle Use Tax rates (please see the included Chart for 2022).

Sale of Vehicle to Resident of Non-Reciprocal State

Item (25) of Section 2-5 of the Retailers' Occupation Tax Act provides an exemption from the tax for ". . . a motor vehicle sold in this State to a nonresident even though the motor vehicle is delivered to the nonresident in this State, if the motor vehicle is not to be titled in this State, and if a drive-away permit is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his or her home state." (35 ILCS 120/2-5(25)).

Item (25-5) of Section 2-5 of the Retailers' Occupation Tax Act provides in part that "[t]he exemption under item (25) does not apply if the state in which the motor vehicle will be titled does not allow a reciprocal exemption for a motor vehicle sold and delivered in that state to an Illinois resident but titled in Illinois." (35 ILCS 120/2-5(25-5)) Publication ST-58, Reciprocal – Non-Reciprocal Vehicle Tax Rate Chart indicates that STATE is a non-reciprocal state for purposes of item (25-5). Item (25-5) goes on to provide that "[t]he tax collected under this Act on the sale of a motor vehicle in this State to a resident of another state that does not allow a reciprocal exemption shall be imposed at a rate equal to the state's rate of tax on taxable property in the state in which the purchaser is a resident, except that the tax shall not exceed the tax that would otherwise be imposed under this Act." The State sales tax rate in STATE is %%%, which is less than the 6.25% rate under the Retailers' Occupation Tax Act. Therefore, sales of motor vehicles to residents of STATE who take delivery in Illinois are subject to Illinois Retailers' Occupation Tax at the rate of %%%.

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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,

Kimberly Rossini
Associate Counsel

KAR:dlb