

This letter discusses the renting of automobiles by dealers in Illinois under rental terms of one year or less that are subject to the Automobile Renting Occupation and Use Tax. 35 ILCS 155/1 et seq; 86 Ill. Adm. Code 180.101. (This is a GIL).

May 2, 2023

NAME
COMPANY
ADDRESS

Dear NAME:

This letter is in response to your letter dated December 20, 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:

We request a general information letter on the application of the Illinois Retailers' Occupation Tax and Use Tax and Automobile Renting Occupation Tax on certain motor vehicle transactions sales. Specifically, a motor vehicle dealer ("Dealer") will sell motor vehicles to an affiliate of a vehicle dealer ("Affiliate"), and the Affiliate will rent the motor vehicles to customers. It is expected that most customers who rent a motor vehicle from the Affiliate would, at the same time, have their own car in for service with the Dealer.

The general facts are that the Dealer is registered as an Illinois vehicle dealer (625 ILCS 5/5-101 et seq.) and Illinois tax collector for Illinois Retailers [sic] Occupation Tax and Use Tax ("ROT and Use Tax"). 35 ILCS 120/1 et seq.; 35 ILCS 105/10 et seq. The Dealer plans to create a wholly-owned limited liability company ("AFFILIATE") to which it will sell vehicles. AFFILIATE will engage in the business of the short-term rentals

of the vehicles (1-year or less) and register under the Automobile Renting Occupation Tax ("AROT"). 35 ILCS 155/1 *et seq.* These short-term rentals will principally be to customers of the Dealer that need loaner cars while the Dealer provides service repairs for the customer vehicle. AFFILIATE will be compensated either by the customer for the rental vehicle or, alternatively, by the Dealer. The amount of the rental price could range for \$\$ a day, to a significantly greater sum or possibly only a minimal amount per day, depending on the type of the loaner and the rental period.

Under the ROT and Use Tax, sales of vehicles to an affiliate when the affiliate will exclusively use such vehicles for rentals that are subject to the AROT, will not be subject to ROT and Use Tax. 35 ILCS 120/2-5 (5). Therefore, the Dealer's sales of vehicles to AFFILIATE should not be subject to ROT and Use Tax. Under the AROT, the short term rental of motor vehicles to customers of the Dealer by AFFILIATE would be subject to the AROT, absent an exemption. 35 ILCS 155/2. Even if the AFFILIATE does not make a profit on the rentals, that is not relevant to whether AFFILIATE's rentals are subject to the AROT. 35 ILCS 155/2. ("For this purpose, the objective of making a profit is not necessary to make the renting activity a business.") Nor is the amount charged or received for the rental relevant to whether the AROT applies to the transaction, since AROT is based on the rental price paid. *Id.*

However, under the AROT, any reimbursement received by the Dealer from a manufacturer pursuant to a manufacturer's warranty or a service contract for rental fees paid by the Dealer to AFFILIATE for the loaner rental is not subject to AROT, rather only the rental fees received by the AFFILIATE for the rental are taxable. *Id.* ("Gross receipts" does not include receipts received by an automobile dealer from a manufacturer or service contract provider for the use of an automobile by a person while that person's automobile is being repaired by that automobile dealer and the repair is made pursuant to a manufacturer's warranty or a service contract where a manufacturer or service contract provider reimburses that automobile dealer pursuant to a manufacturer's warranty or a service contract and the reimbursement is merely made to recover the costs of operating the automobile as a loaner vehicle.").

Consequently, it is requested that the Department of Revenue confirm in a general information letter that the above stated understanding of the application of the ROT and Use Tax and AROT to the Dealer and AFFILIATE are correct.

Thank you for your time and consideration of this matter.

DEPARTMENT'S RESPONSE:

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 35 ILCS 120/2; 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 35 ILCS 105/3; 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 the Use Tax to the retailer at the time of purchase. The retailers are then allowed to reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

A person who is engaged in the business of selling motor vehicles to a purchaser for his use and not for the purpose of resale, is a retailer engaged in the business of selling tangible personal property at retail under the Retailers' Occupation Tax Act. Unless an exemption can be found, Dealer is liable for Retailers' Occupation Tax, and AFFILIATE is liable for Use Tax, on the sale of the motor vehicles from Dealer to AFFILIATE.

The Retailers' Occupation Tax Act and Use Tax Act contain exemptions from tax for gross receipts received from proceeds from the sale of a motor vehicle that is used for automobile renting, as defined in Automobile Renting Occupation and Use Tax Act. 35 ILCS 120/2-5(5); 35 ILCS 105/3-5(10).

The Automobile Renting Occupation and Use Tax Act ("AROT") imposes a tax upon persons engaged in this State in the business of renting automobiles in Illinois under lease terms of one year or less at the rate of 5% of the gross receipts from such business. 35 ILCS 155/1 *et seq.* See 86 Ill. Adm. Code 180.101. "Gross receipts" means the total rental price or leasing price. "Rental price" means the consideration for renting or leasing an automobile valued in money, whether received in money or otherwise, including cash credits, property and services, and shall be determined without any deduction on account of the cost of the property rented, the cost of materials used, labor or service cost, or any other expense whatsoever, but does not include charges that are added by a rentor on account of the rentor's tax liability under this Act or on account of the rentor's duty to collect, from the rentee, the tax that is imposed by AROT. 35 ILCS 155/2.

"Gross receipts" does not include receipts received by an automobile dealer from a manufacturer or service contract provider for the use of an automobile by a person while that person's automobile is being repaired by that automobile dealer and the repair is made pursuant to a manufacturer's warranty or a service contract where a manufacturer or

service contract provider reimburses that automobile dealer pursuant to a manufacturer's warranty or a service contract and the reimbursement is merely made to recover the costs of operating the automobile as a loaner vehicle.

35 ILCS 155/2; 86 Ill. Adm. Code 180.125(b).

Generally, this exclusion applies when an automobile dealer makes repairs for an automobile owner under the terms of a manufacturer's warranty or service contract and the manufacturer's warranty or service provider's contract provides that the manufacturer or service provider will provide the owner with another automobile to drive while the owner's automobile is being repaired. Pursuant to the terms of an agreement between the manufacturer or service provider and the dealer, the dealer provides the owner with a replacement automobile either from its sales inventory or from its rental inventory. In exchange, the manufacturer compensates the dealer for that replacement automobile. Sections 180.125(b) and 180.135 more fully explain the nature and scope of the exemption.

In the case where the owner of the automobile being repaired by the dealer rents an automobile directly from a rentor other than the dealer, the rentor owes tax based on the gross receipts received from the owner. Under these circumstances, the dealer is not providing the automobile to the owner, and any money the dealer receives from the manufacturer or service contract provider for the use of an automobile by the owner while the owner's automobile is being repaired is not included in the rentor's receipts for purposes of AROT, assuming the dealer does not pass on to the rentor any money it receives from the manufacturer or service contract provider.

In the case where the dealer rents an automobile from a rentor and provides the automobile to the owner of an automobile being repaired by the dealer, the dealer's rental from the rentor is non-taxable to the dealer, so long as the requirements of Section 180.135 are met. The dealer's subsequent provision of an automobile to the owner is non-taxable so long as the requirements of subsection (b) of Section 180.125 are satisfied. 86 Ill. Adm. Code 180.125(b)(2). Any compensation the dealer receives from the manufacturer or service contract provider to reimburse the dealer for the cost of providing an automobile to the owner while the owner's automobile is being repaired is not subject to AROT. Any receipts the dealer receives from the owner that exceed the compensation paid to the dealer by the manufacturer or service contract provider as reimbursement for the cost of operating the replacement vehicle as a loaner vehicle are taxable under AROT.

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.

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Very truly yours,

Richard S. Wolters
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