

If no tangible personal property is transferred to the customer, then no Illinois Retailers' Occupation Tax or Service Occupation Tax would apply. See 86 Ill. Adm. Code Parts 130 and 140. (This is a GIL.)

September 29, 2009

Dear Xxxxx:

This letter is in response to your letter dated March 2, 2009, 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](http://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:

FIRM respectfully requests an anonymous ruling on behalf of our client (the 'Company') regarding application of the Illinois sales and use tax to the transaction described below.

This request outlines the facts surrounding the Company's activities in Illinois, states the applicable statutory provisions, and discusses our position relating to the application of Illinois sales tax to this transaction.

### **Facts and Representations**

The Company is a motor vehicles retailer. The Company maintains business locations in multiple states, including Illinois. Customers may purchase motor vehicles from the Company directly at the Company's business locations. On many occasions, a vehicle meeting the customer's requirements is not available at the Company store in the customer's immediate vicinity. And, as one would expect, most customers are unwilling to purchase a motor vehicle sight unseen and without a test drive.

On such occasions where a customer is interested in viewing and testing a motor vehicle not located at the nearest Company store, the Company will offer the customer the option of having that motor vehicle shipped to one of its business locations near the customer's home. This transfer is done under the terms of a specific and separate

transfer agreement between the Company and the customer (hereafter the 'Transfer Contract'). The Company charges its customers a 'transfer fee' for this service.

The transfer/shipping process consists of six steps:

1. Customers contact the Company location closest to where they live:<sup>1</sup>  
Customers call a Company Sales Consultant or submit a Vehicle Transfer Form from a Vehicle Fact Sheet. If a Customer chooses to submit a form online, a Sales Consultant will contact the Customer to answer any questions about the vehicle, and to ensure that the vehicle meets their specific needs.
2. Pre-transfer inspection: The Sales Consultant inspects the car and provides answers to the Customer's questions at no charge to the Customer.
3. Confirmation: The Sales Consultant contacts the Customer to answer any additional questions. If the vehicle is not at the Customer's delivery location, the Sales Consultant will confirm the Customer's order to have the vehicle transferred.
4. Contract: The Customer is required to enter into a contract (the 'Transfer Contract') calling for the transfer of the subject vehicle at a stated fee.
5. Payment of the Transfer Fee: If the Customer executes the transfer agreement, the Customer is required to either:
  - Bring a check for the full amount of the transfer fee to the Company location where the vehicle will be transferred; or
  - Pay the transfer fee over the phone using their credit card.
6. Reservation & Transfer: Once payment is received, the Sales Consultant verifies that the vehicle has been reserved and it is scheduled for transfer.

It should be noted that the Transfer Contract relates only to shipping vehicles. No other services are provided in exchange for the 'transfer fee'. For instance, executing the Transfer Contract does not entitle the customer to a vehicle fact sheet, on location inspection, and/or any other service. More importantly, the Transfer Contract is not dependent upon any other agreement - and in particular, is not dependent on the ultimate sale of the vehicle. Indeed, frequently a vehicle which has been transferred is *not* purchased by the customer who executes a Transfer Contract and the transfer fee. In such cases, the transfer fee is not refunded. Likewise, if the vehicle is purchased, that purchase is executed under a separate purchase and sale contract which neither refers to, nor incorporates by reference, the Transfer Contract. In no circumstances does either the existence of a Transfer Contract or payment of a transfer fee impact the sales price of the motor vehicle. In short, if a customer pays a transfer fee to view and inspect a vehicle, the price at which the transfer fee is not deducted from, or considered to be part of, the sales price.

### **Issue**

Whether the 'transfer fees,' paid pursuant to the Transfer Contract described above, are subject to Illinois sales and use tax?

## **Discussion**

Illinois imposes a retailers' occupation tax on persons engaged in the business of selling tangible personal property to buyers for use or consumption, and is measured by the seller's gross receipts from such sales made in the course of the seller's business.<sup>ii</sup> The service occupation tax applies to persons engaged in the business of making sales of service.<sup>iii</sup> Pure services as such are not taxable. Service persons, however, are liable for the tax on tangible personal property transferred as an incident to their retail sale of services.<sup>iv</sup> The use taxes complement the retailers' occupation and the service occupation taxes and are imposed on the purchaser for the privilege of using in Illinois, property acquired anywhere at retail or as an incident to the purchase of services.<sup>v</sup>

Delivery or transportation charges may be subject to the retailers' occupation tax. 'Transportation or delivery charges' means freight, express, mail, truck, or other carrier, conveyance, or delivery expenses. Such charges are often designated as shipping and handling charges.<sup>vi</sup> The separate billing of transportation charges does not determine if a seller can deduct from gross receipts amounts charged to customers covering the seller's payment of charges for delivering the property sold to the customer, or the seller's expense in delivering the property itself.<sup>vii</sup> Rather, deductibility depends on whether the charges are included in the property's selling price or whether the seller and buyer contract separately for the charges by not including them in the sales price.<sup>viii</sup> Any charges for transportation and delivery that exceeds the actual cost of shipping and delivery are taxable.<sup>ix</sup>

However, were the seller and buyer agree on the transportation or delivery charges separately from the selling price of the property sold, the charges are a separately contracted for service charge and are not part of the property's selling price.<sup>x</sup> A separate contract is the best evidence that transportation and delivery charges were agreed to separately.<sup>xi</sup> Documentation that the buyer had the option of taking delivery of the property at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price plus an ascertained or ascertainable charge, is sufficient to show that the charges were agreed to separately.<sup>xii</sup>

The transfer fee constitutes payment for a non-taxable transportation service and is not 'part of' the retail sale of the motor vehicle. It is not a 'delivery' charge associated with the sale of a car. Rather, it is a transportation service provided pursuant to a separate contract, negotiated separately, and paid/invoiced separately. Neither contract (the Transfer Contract and the Vehicle Sales Price/Sales Contract) is dependent, contingent upon, nor incorporated by reference into the other. Indeed, transfers are requested by the Customer and paid for prior to any commitment to purchase the vehicle. Transfer Fees are not dependent upon the sale of the vehicle and are based upon the distance of the transfers, not the asking price of the vehicle. If the Customer chooses to purchase the vehicle, the ultimate sales price of the vehicle is consistent with the sales price at the original location, and the transfer fee neither increases nor decreases the ultimate sales price of the vehicle. Further, the transfer fee is separately invoiced to the Customer and is treated as a separate transaction from any sale of a vehicle. In short the Transfer fee represents a charge for non-taxable transportation service. The separate Transfer Contract, separate invoice, and so forth, all evidence that the Transfer fee is a separately agreed to and separately ascertainable charge outside of the sale of vehicle and thus not taxable.<sup>xiii</sup>

The transfer also should not be taxable as a service since such service is not subject to the retailers' occupation tax as a separate transaction. Pure services are not subject to tax in Illinois. The transfer fee represents payment by the original Customer for a non-taxable service that was not rendered in connection with, or as part of the taxable sale of a motor vehicle, regardless of whether the Customer ultimately purchases the vehicle. Accordingly, the transfer fee should not be subject to tax.

### Conclusion

For the foregoing reasons, the Company respectfully requests that the Illinois Department of Revenue confirm the following positions:

- Illinois retailers' occupation tax does not apply to transfer fees charged and collected by the Company if the Customer ultimately purchases the motor vehicle transferred to the Company's place of business, because the fee does not relate to the taxable sale of the vehicle, is separately negotiated, separately invoiced and part of a distinct and separate contract; and
- Illinois retailers' occupation tax does not apply to transfer fees charged and collected by the Company if the Customer ultimately does not purchase the motor vehicle transferred, because such transactions involve only the provision of a non-taxable service.

Please do not hesitate to contact me if you have any questions regarding this ruling request, or if you require any additional information.

### **DEPARTMENT'S RESPONSE:**

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. 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 no tangible personal property is being transferred to the customers, then neither Retailers' Occupation Tax nor Use Tax would apply.

Retailers' Occupation and Use Taxes do not apply to sales of service. The Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. However, if no tangible personal property is transferred incident to a sale of service, the Service Occupation Tax and Service Use Tax do not apply.

If the transactions you are inquiring about do not involve the transfer of any tangible personal property to the customer, then they generally would not be subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax. In contrast, please see 86 Ill. Adm. Code 130.415 which addresses incoming transportation costs that are subject to Retailers' Occupation Tax.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Samuel J. Moore  
Associate Counsel

SJM:mks

---

<sup>i</sup> In larger markets, the Company may have more than one store within easy driving distance of a customer.

<sup>ii</sup> ILCS § 120/2.

<sup>iii</sup> ILCS § 115/3.

<sup>iv</sup> *Id.*

<sup>v</sup> ILCS § 110/3.

<sup>vi</sup> Ill. Admin. Code 86 §130.415(a).

<sup>vii</sup> Ill. Admin. Code 86 §130.415(b).

<sup>viii</sup> *Id.*

<sup>ix</sup> *Id.*

<sup>x</sup> Ill. Admin. Code 86 §130.415(d).

<sup>xi</sup> *Id.*

<sup>xii</sup> *Id.*

<sup>xiii</sup> *Id.*