

This letter discusses the Interstate Commerce exemption. See 86 Ill. Adm. Code 130.605.  
(This is a GIL.)

January 3, 2008

Dear Xxxxx:

This letter is in response to your letter dated November 19, 2007, 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:

We are an Illinois Auto Dealership, and have received conflicting information regarding taxation on 'out-of-country' purchases.

If a client residing and titling a vehicle in Canada purchases a vehicle from us and drives it home, do we have to collect any tax, or can we give him a 'drive-away' sticker?

Also, if same type of client purchases a vehicle from us and 'trailers' it back to Canada himself – what are the tax obligations, if any?

Because we have had several different answers (depending on who we ask), *please* provide your answer in writing along with any applicable documentation/tax guide reference sheets.

Thank you very much for any/all help you can provide. I look forward to hearing back from you soon.

**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. The tax is measured by the seller's gross receipts from such sales made in the course of such business. 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. Mere possession in Illinois is considered a use. Consequently, if the purchase occurs in Illinois, the purchaser must pay the Use Tax to the retailer. Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State immediately transports the property out of this State for use outside the State. See 86 Ill. Adm. Code 130.605(a)(2).

The State of Illinois has no specific exemption for purchases by foreign travelers where the property is delivered and used in Illinois. However, retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales. For example, the exemption would apply when a seller makes delivery in Illinois to a freight forwarder who handles the arrangements for the property to be delivered outside the United States, not to be returned to the United States. 86 Ill. Adm. Code 130.605(g). However, there is no exemption for property delivered in Illinois to foreign vessels.

The result would be different if the purchaser received or picked up the goods prior to delivery to a freight forwarder. A sale is not deemed to be in foreign commerce if the purchaser or his representative receives the physical possession of the property in this State. 86 Ill. Adm. Code 130.605(a)(1). This is so notwithstanding the fact that the purchaser may, after receiving physical possession of the property in this State, transport or send the property out of the State for use outside the State or for use in the conduct of foreign commerce.

Tax is not imposed upon the sale of a motor vehicle 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 for purposes of transporting the motor vehicle to the other state is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code [625 ILCS 5/3-603] or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his or her home state. 86 Ill. Adm. Code 130.605(b)(1). However, this exemption 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. 86 Ill. Adm. Code 130.605(b)(1)(A).

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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters  
Associate Counsel

RSW:msk