

This letter discusses trade-ins of motor vehicles. See 86 Ill. Adm. Code 130.455. (This is a GIL.)

April 1, 2011

Dear Xxxxx:

This letter is in response to your letter dated March 16, 2011, 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 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:

This letter is to request a document stating that the Illinois Department of Revenue does not require a person trading in a vehicle to pay sales taxes on said vehicle before trading in the vehicle to our dealership.

If you have any questions, please do not hesitate to call. Thank you.

DEPARTMENT’S RESPONSE:

The Department’s regulations regarding trade-ins can be found on the Department’s website. Please see 86 Ill. Adm. Code 130.425 Traded-In Property and 86 Ill. Adm. Code 130.455 Motor Vehicle Leasing and Trade-In Allowances.

Sections 130.425 and 130.455 of the Department’s rules do not contain any requirement that the traded-in tangible personal property had to be originally purchased in this State or that the original purchase was subject to Retailers’ Occupation Tax or Use Tax liability. Tangible personal property that is of like kind and character may qualify as a trade-in regardless of whether any Illinois Retailers’ Occupation Tax or Use Tax was incurred or paid on the original acquisition of that property.

Regarding the trade-in of motor vehicles titled in other states, there is no requirement that the traded-in motor vehicle be titled or registered in this State at any time. The taxation or lack of taxation of the original purchase of the trade-in vehicle, whether such original purchase occurred in this State or any other location, has no impact on whether that vehicle can be used as a trade-in in this State.

There are generally two types of trade-ins recognized in this State for sales tax purposes. The first type of trade-in is the traditional “simultaneous trade-in” whereby the trade-in and retail sale occurs at the same time. If no trade-in was taken at the time of the transaction, then the transaction cannot later be changed to create a trade-in for sales tax purposes. Subsection (e) of Section 130.455 regarding vehicle trade-ins specifically provides that:

“No trade-in credit may be used in a transaction where the sales or use tax return does not reflect that a trade was offered at the time of the sales transaction. The appropriate sales or use tax return cannot be amended to reflect the value of or credit given for a vehicle offered for trade subsequent to the completion of the sales transaction.” 86 Ill. Adm. Code 130.455(e).

The second type of trade-in regarding vehicles is the “advance trade-in” created by Section 130.455(d) of the Department’s Administrative Rules. A transaction may constitute an advance trade-in if, at the time the vehicle is traded to the dealer, the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advance trade-in transaction. 86 Ill. Adm. Code 130.455(d). As provided in subsection (d)(3) of Section 130.455, documentation evidencing an advance trade-in transaction must include the following: The contract establishing the value of or credit given for a traded-in vehicle, the obligation to purchase a vehicle, and the date of expiration of the advance trade-in credit; the bill of sale for the traded-in vehicle; and the appropriate sales or use tax return evidencing the purchase of the new or used vehicle and recording the application of the advance trade-in credit. Advance trade-in transactions may not be structured so that the purchaser is not the owner of the automobile offered for trade. 86 Ill. Adm. Code 130.455(d)(3).

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,

Richard S. Wolters
Associate Counsel

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