

This letter discusses sales of motor vehicles involving drive-away decals. See 86 Ill. Adm. Code 130.605. (This is a GIL.)

March 20, 2008

Dear Xxxxx:

This letter is in response to your letter dated September 17, 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:

Our Company, is in the business of retailing motorcycles, ATV's, Scooters, Motor homes and Travel Trailers. We occasionally sell units to residents of Canada or Mexico. We have charged Illinois sales tax for these transactions and remitted the sales tax to the State on an SST-556 [sic]. Last month we had a Canadian resident purchase a Travel Trailer. They took delivery in our store in Illinois and then drove the unit home. We issued an Illinois drive away permit, charged sales tax and remitted the tax to the state. Upon crossing the border into Canada, our customer was charged sales tax for Canada. They called IDOR and were told that the selling dealer should not have charged sales tax on the unit and the selling dealer would have to file an amended form to recoup the sales tax. We have since done this. When we called the State we have been told, at different times, that we must charge tax and also that we are not to charge tax. I sent an e-mail question and was instructed not to charge tax for these transactions for Canadian residents who take delivery in Illinois, and then remove the unit out of the Country. I would like some definitive instructions on whether to charge or not to charge sales tax on licensable vehicles sold to Canadian or Mexican residents who take delivery in Illinois with the intention of transporting the units to their home Country for use. As you know the instructions for the SST-556 [sic] indicate that there is an exemption for sales tax when the unit is purchased to residents of certain states. We are to notate the drive away permit number and state of residence; however, Canada and Mexico are not states.

Thank you for your consideration and attention in 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. 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).

Although 86 Ill. Adm. Code 130.605(b)(1) references that no tax is imposed if a drive-away permit is issued for purposes of transporting the motor vehicle to the another state, the tax is likewise not imposed if the nonresident transports the motor vehicle to Canada, Mexico or any other foreign country. The Department intends to amend its rules in the near future to make this explicit.

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