

A watercraft use tax is incurred on any non-retail "transfer" of watercraft, other than on the very limited exemptions set out under the Department's regulations. See 86 Ill. Adm. Code 153.115. (This is a GIL.)

April 14, 2008

Dear Xxxxx:

This letter is in response to your letter dated July 30, 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 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:

I am writing this letter for guidance from the Illinois Department of Revenue on complying with the Watercraft Use Tax. I represent a client who would like to transfer his boat to his revocable self-declaration of trust, also commonly known as a 'living trust'. I am uncertain whether the Watercraft Use Tax applies to the transfer of one's boat to one's living trust and how the RUT-75 form should be completed [sic] if the transfer is exempt.

I recently reviewed the Watercraft Use Tax law, the Illinois Administrative Code, Form RUT-75 and its instructions but could find no specific reference to transfers by an individual of a watercraft to his or her own living trust. As you may be aware, individuals commonly transfer property to living trusts for important non-tax reasons, such as probate avoidance at death. Such trusts are not regarded as separate entities for federal and state income tax purposes and report all income under the grantor's social security number. My client would be the trustee of the trust during his life and has the power to revoke the trust at all times. Obviously, there would be no consideration in this transaction.

While there is no specific exemption for such transfers under Illinois law, the statute and administrative code do exempt similar transfers. For example, the statute exempts transfers from an estate to a surviving spouse. Also, the administrative code exempts transfers between immediate family members where there is no tax avoidance. It would seem that if transfers between family members is exempt, so too would be transfers

between an individual and himself as trustee of his own revocable self-declaration of trust.

I would appreciate it if your department could provide me with written guidance on the above question. If the transaction is exempt, I will need instructions to properly complete the RUT-75 so that I can submit the required proof of no tax due to the Illinois Department of Natural Resources when re-registering the boat.

Feel free to call me if you have any questions.

DEPARTMENT'S RESPONSE

Please note that the State of Illinois is not bound by federal income tax determinations for purposes of applications of Illinois sales and excise tax laws. Trusts, including "living trusts," are considered separate legal entities for Illinois sales and excise tax purposes. As such, a transfer from an individual owner to a trust is a taxable event because the transfer is from one legal entity to another (from a person to a trust).

A watercraft use tax is incurred on any non-retail "transfer" of watercraft, other than on the very limited exemptions set out in the Watercraft Use Tax Law. See the Department's regulations at 86 Ill. Adm. Code 153.115. Under the Watercraft Use Tax Law there is no exemption for watercraft acquired by trusts through transfer. Therefore, the acquisition of a watercraft from an individual to a trust, which is a separate legal entity, through transfer is a taxable transaction and Watercraft Use Tax liability is incurred on that watercraft acquired by transfer.

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. 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,

Debra M. Boggess
Associate Counsel

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