

See 86 Ill. Adm. Code 130.2125(e). The taxation of automobile dealer incentives will depend upon whether the dealer receives a payment from a source other than the purchaser that is conditioned upon the retail sale of an automobile. (This is a GIL.)

May 18, 2010

Dear Xxxxx:

This letter is in response to your letter dated September 23, 2009 and follow-up dated February 11, 2010, 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 of September 23, 2009, you have stated and made inquiry as follows:

This law firm represents BUSINESS and its affiliated Illinois motor vehicle dealers (collectively, the 'Taxpayers') and hereby requests a ruling on behalf of the Taxpayers concerning the application of Illinois Retailers' Occupation Tax and Use Tax to the facts and transaction described below. Specifically, please advise us as to whether the scenario described below constitutes a nontaxable dealer incentive pursuant to 86 Illinois Administrative Code 130.2125(e). Enclosed is a power of attorney authorizing our firm's representation. No audit or litigation is pending with regard to the transactions and no specific tax period is at issue. To the best of the Taxpayers' knowledge and that of the Taxpayer's representative, the Department of Revenue has not previously ruled on the same or similar issue for the Taxpayers or any predecessors nor have the Taxpayers or any of their representatives submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

Facts

COMPANY (the 'Manufacturer'), as the manufacturer of motor vehicles that it sells to the Taxpayers, withholds 3% of the Manufacturer's Suggested Retail Price when it sells new and ex-consigned wholesale vehicles to the Taxpayers. The amount withheld is earned by the Taxpayers when the Taxpayer makes a retail sale of an eligible vehicle. However, the amount withheld is not paid to the Taxpayers at that time. Instead, the

Manufacturer accrues interest on the amount withheld and makes payments to the Taxpayers in the amount of 40% of the amounts withheld at the end of the first calendar quarter after the vehicle is sold and the balance of the amount withheld plus all interest accrued at the end of the second calendar quarter after the vehicle is sold. For eligible vehicles that the Taxpayers do not sell for a period of two years, the Manufacturer pays the Taxpayers all remaining amounts that were withheld when the Manufacturer sold the vehicles to the Taxpayers at wholesale regardless of whether the Taxpayers sold the vehicles.

Requested Ruling

- That the automobile dealer incentive described above is not conditioned upon the retail sale of an automobile and therefore is not subject to Illinois Retailers [sic] Occupation Tax or Use Tax.

Discussion

As provided in 86 Illinois Administrative Code 130.2125(e)(1), for sales made on and after July 1, 2008, the taxation of automobile dealer incentives depends upon whether the dealer receives a payment from a source other than the purchaser that is conditioned upon the retail sale of an automobile. If a dealer receives payment in exchange for the purchase of an automobile from a supplier or manufacturer, and that payment is not conditioned upon the sale of that automobile to a retail consumer, the amount of that payment is not part of the taxable gross receipts received by the dealer for the retail sale of that automobile.

As stated above, for eligible vehicles in inventory at the end of a two year cycle (i.e., that were never sold), the Manufacturer pays the Taxpayers all remaining withheld funds in full regardless of whether the Taxpayers have sold the vehicles. Therefore, there [sic] payments are not conditioned on the sales because the Taxpayers are entitled to the payments regardless of whether they sell the vehicles. Consequently, the incentive payments are not subject to the Retailers' Occupation Tax or Use Tax.

Your consideration of this issue is appreciated. Please contact me with your questions, comments and initial conclusions.

In your letter of February 11, 2010, you have stated and made inquiry as follows:

This law firm represents BUSINESS and its affiliated Illinois motor vehicle dealers (collectively, the 'Taxpayers') pursuant to the enclosed power of attorney. We previously submitted a letter to you dated September 23, 2009 (copy enclosed) requesting a ruling concerning the application of Illinois Retailers' Occupation and Use Tax to a dealer reserve program based on 86 Illinois Administrative Code 130.2125(e). We had a brief discussion with Sam Moore of your office after his preliminary review of the original letter. He requested that we submit a copy of the language in the agreement between the Taxpayers and the manufacturer (i.e., COMPANY) regarding the program. The program description is provided on a website that is accessible by the Taxpayers. Enclosed are screen prints of the relevant pages of the website, including the home page and the description of the dealer program. We would also like to clarify that all receipts from the program are not taxable based on 86 Illinois Administrative Code 130.2125(e).

86 Illinois Administrative Code 130.2125(e)(1) states:

The taxation of automobile dealer incentives will depend upon whether the dealer receives a payment from a source other than the purchaser that is conditioned upon the retail sale of an automobile. If an automobile dealer receives a payment as an incentive for the retail sale of an automobile, the amount of that reimbursement or payment is part of the taxable gross receipts received by the dealer for the sale of that automobile. If a dealer receives payment in exchange for the purchase of an automobile from a supplier or manufacturer, and that payment is not conditioned upon the sale of that automobile to a retail consumer, the amount of that payment is not part of the taxable gross receipts received by the dealer for the retail sale of that automobile. The determination of taxability under the provisions of this subsection (e)(1) is not dependent on whether the retailer is required to lower the selling price of the vehicle as a condition for receiving the incentive payment. Notwithstanding the provisions of this subsection (e)(1), the payment is not part of the taxable gross receipts from a retail sale if, at the time of the retail sale, the payment is contingent on the dealer making or having made any additional retail sales. In addition, a dealer incentive or bonus contingent on the dealer meeting certain manufacturer required marketing standards, facility standards, or sales and service department satisfaction goals is not part of the taxable gross receipts from a retail sale of vehicles sold by that dealer, even if the incentive or bonus is calculated using the gross receipts, Manufacturer's Suggested Retail Price (MSRP), or a flat amount per vehicle.

In addition, 86 Illinois Administrative Code 130.2125(e)(2) Example 3 states [sic]:

(non-taxable dealer hold-backs – payment not conditioned on the retail sale): A manufacturer provides dealer hold-back payments to its automobile dealers of 3% of the invoice price of each vehicle purchased from that manufacturer. The dealer hold-back payments are paid to the dealer on a quarterly basis regardless of whether that dealer has sold at retail one or more of the vehicles it had purchased that quarter. The dealer purchases a vehicle from the manufacturer at the beginning of the month for an invoice price of \$39,000 and then sells that vehicle 10 days later at retail for \$40,000. The manufacturer of that vehicle pays an amount to the dealer of \$1,170 (3% of the invoice price of \$39,000) at the end of the quarter as a dealer hold-back for that vehicle. Since the \$1,170 hold-back payment to the dealer from the manufacturer is conditioned only on the purchase of the vehicle from the manufacturer (not on the subsequent retail sale of the vehicle), the taxable gross receipts received by the dealer for this sale are only \$40,000.

The COMPANY dealer reserve program at issue involves the manufacturer providing dealer hold-back payments to its dealers of 3% of the Manufacturer's Suggested Retail Price (MSRP) of each vehicle purchased from the manufacturer. The dealer hold-back payments are paid to the dealer regardless of whether the dealer has sold at retail one or more of the vehicles it has purchased. The hold-back payment to the dealer from the manufacturer is conditioned only on the purchase of the vehicle from the manufacturer (not on the subsequent retail sale of vehicle). The difference between 86 Illinois

Administrative Code 130.2125(e)(2) Example 3 and the COMPANY dealer program is that instead of paying the dealer hold-back payments to the dealer on a quarterly basis regardless of whether the dealer has sold at retail one or more of the vehicles it had purchased that quarter, COMPANY in this case will pay the dealer hold-back payments to the dealer using a measurement date of when the vehicle was sold. 40% of the hold-back will be paid at the end of the first quarter after the retail sale of the vehicle and the remaining amount will be paid at the end of the second quarter after the retail sale. However, payment of the hold-back is guaranteed regardless of whether the dealer sells the vehicle at retail and the amount of the hold-back payment for all vehicles is known at the time the dealers purchase the vehicles from the manufacturer. If a vehicle is not sold at retail within a 2 year period, the dealer hold-back will be paid. The payment of the dealer hold-back for this program is not conditioned upon the sale of that automobile to a retail consumer only the timing of when the dealer will receive the payment is determined by the retail sale. Therefore, since the dealer hold-back is not conditioned on the sale of the vehicle, it is not subject tax [sic].

As stated in our original ruling request, we request a ruling on whether the automobile dealer incentive described above is not conditioned upon the retail sale of an automobile and therefore is not subject to Illinois Retailers [sic] Occupation Tax or Use Tax.

Please let us know if you have any question.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope, however, the following will be helpful in addressing your questions.

We believe that the scenario outlined in this letter ruling request falls within the parameters of EXAMPLE 3 of 86 Ill. Adm. Code 130.2125(e)(2) concerning the taxability of automobile dealer incentives under the Retailers' Occupation Tax Act. That example reads as follows:

EXAMPLE 3 (non-taxable dealer hold-backs – payment not conditioned on the retail sale): A manufacturer provides dealer hold-back payments to its automobile dealers of 3% of the invoice price of each vehicle purchased from that manufacturer. The dealer hold-back payments are paid to the dealer on a quarterly basis regardless of whether that dealer has sold at retail one or more of the vehicles it had purchased that quarter. The dealer purchases a vehicle from the manufacturer at the beginning of the month for an invoice price of \$39,000 and then sells that vehicle 10 days later at retail for \$40,000. The manufacturer of that vehicle pays an amount to the dealer of \$1,170 (3% of the invoice price of \$39,000) at the end of the quarter as a dealer hold-back for that vehicle. Since the \$1,170 hold-back payment to the dealer from the manufacturer is conditioned only on the purchase of the vehicle from the manufacturer (not on the subsequent retail sale of the vehicle), the taxable gross receipts received by the dealer for this sale are only \$40,000.

The determinative factor in this example is that the payment received from a third party (the automobile manufacturer in this case) by the dealer is not conditioned upon the sale of the vehicle. If the timing of a payment to a dealer from a third party is not the same as in the example, but the payment is made to the dealer regardless of whether the vehicle is sold, then that payment is not conditioned on the sale of the vehicle and is therefore not subject to the Retailers' Occupation Tax.

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.

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:mks