

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

June 14, 2012

Dear:

This letter is in response to your letter dated April 27, 2012, which supersedes your letter dated October 27, 2011, in which you requested a Private Letter Ruling. 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to BANK, FEIN X, ("BANK") for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither BANK ("BANK") nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of our client, BANK, ('BANK'), we respectfully request the Illinois Department of Revenue (the 'Department') to issue a Private Letter Ruling ('PLR') pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

BANK is a National Banking Association organized and operated under the National Bank Act. Effective MONTH1 X, 20XX, via a Merger Agreement and Consent of Shareholders, a copy of which is enclosed with this letter, a wholly owned subsidiary of BANK known as COMPANY1 (the 'Company') merged with and into BANK (the 'Merger'). As described in more detail below, as a result of the Merger, BANK acquired all assets and assumed all liabilities of the Company.

The Company was a financial lender that provided motor vehicle lease financing arrangements to automotive dealerships. At the time of the Merger, the Company had developed a program to participate in the Illinois Retailers' Occupation Tax advance trade-in credit available for motor vehicles under 86 Ill. Admin. Code Sec. 130.455. BANK respectfully requests this private letter ruling to approve the operation of the program, which it will operate as successor in interest to the Company.

General Information

1. Enclosed please find an original Form IL-2848, Power of Attorney, authorizing COMPANY2 to represent BANK before the Department.
2. This PLR is not requested with regard to hypothetical or alternative proposed transactions. This PLR is requested to determine the Retailers' Occupation Tax consequences of the actual business practices of BANK.
3. Neither the Company nor BANK is currently engaged in litigation with the Department in regard to this or any other tax matter.
4. The Company is not currently under audit by the Department in regard to this issue. BANK is currently under audit by the Department for sales/use tax purposes for the period MONTH2 X, 20XX through MONTH3 X, 20XX.
5. To the best of BANK's knowledge, the Department has not previously ruled regarding this matter for the Company or BANK. In addition, neither the Company nor BANK has submitted the same or similar issue to the Department.
6. BANK requests that certain information be deleted from the PLR prior to dissemination to others. BANK requests that its name, together with the name of Company, their addresses, date of statutory merger, names of their private label clients and name of their representative be deleted.
7. BANK requests that the PLR be issued for all tax periods after September 2011.
8. Enclosed please find a copy of a sample advance trade-in contract agreement, which BANK will use in participating in the Illinois advance trade-in credit for motor vehicles.
9. BANK is unaware of any authority contrary to the authorities referred to and cited below.

Statement of Material Facts

1. By a Merger Agreement and Consent of Shareholder effective MONTH1 X, 20XX, the Company merged with and into BANK, with BANK being the surviving entity. Under federal banking law and regulations, BANK acquired all the assets and assumed all the liabilities of the Company upon the Company's merger with and into BANK. The Merger Agreement provides, in relevant part:

1.04. Properties of Continuing Association. At the Effective Time [MONTH1 X, 20XX], all property, real, personal and mixed, and all debts on whatever account and all other choses in action and all and every other interest, of or belonging to, or due to, the Merged Entity [the Company] shall be taken and deemed to be transferred to and vested in the Continuing Association [BANK] without further act or deed, and the title to all real estate, or any

interest therein, under the laws of Delaware or any other state or of the United States, vested in the Merged Entity shall vest in the Continuing Association. The Merged Entity shall execute all such instruments of transfer, if any, as shall be necessary under the law to vest all the right, title and interest of the Merged Entity in and to its assets in the Continuing Association.

1.05. Liabilities of the Continuing Association. The Continuing Association at and after the Effective Time shall be responsible and liable for and assume all of the liabilities, deposits, contracts and obligations of the Merged Entity in the same manner and to the same extent as if the Continuing Association had itself incurred the same or contracted therefore, ...

2. As a result of the Merger, BANK owns and is responsible for all the assets, rights, privileges, immunities, franchises, liabilities and obligations of its merged subsidiary, the Company. All motor vehicles previously owned by the Company, although not retitled from the Company's name, are now owned by BANK.
3. BANK provides operating leases to end-user customers who wish to lease select motor vehicles from automotive dealerships affiliated with at least one of BANK's private label clients (the 'Dealers'). Private label clients refer to automotive companies which exclusively do business with BANK. Our private label clients are manufacturers who utilize BANK for the subvented retail and lease business. These manufacturers only offer these manufacturer retail and lease subvented programs through BANK and not through other lenders. BANK does not enter into any lease financing arrangements involving any automotive label or dealers not affiliated with at least one of its private label clients.
4. BANK executes its operating lease agreements by purchasing the motor vehicle selected by the end-user customer from a Dealer and then such Dealer leases the motor vehicle to the end-user customer. Thus, BANK becomes the legal owner of the motor vehicle and retains title to the motor vehicle while the end-user customer maintains control of the car. At the end of the lease term, BANK may dispose of its off-lease motor vehicle by selling it to the end-user customer, selling it to a Dealer for resale, trading it in to a Dealer for the residual amount on the lease contract plus any related fees, or auctioning it off to any dealership at fair market value.
5. BANK will dispose of its off-lease motor vehicles through physical and online dealer auction sales. Online auction sales may occur during any time of the day, including times outside normal business hours and bank holidays.
6. As part of its off-lease motor vehicle disposal process, BANK will periodically engage in an advance trade-in transaction with a Dealer to trade in an off-lease motor vehicle that it owns, for the purchase of a replacement vehicle from the same Dealer to lease to end-user customers. Accordingly, BANK will enter into

advance trade-in credit agreements with Dealers in the course of direct purchase/sale transactions, and physical and online auction sales.

7. BANK will participate in the Illinois sales/use tax advance trade-in credit by offering the opportunity to participate in the credit program exclusively with Illinois-licensed automotive dealerships affiliated with at least one of BANK's private label clients.
8. BANK's procedures for processing advanced trade-in credit documentation may require a one business day period to complete the process.
9. In a direct purchase/sale transaction, BANK will enter into a contract agreement to trade in off-lease motor vehicles to a Dealer and to purchase replacement motor vehicles from the same Dealer. After trading in its off-lease motor vehicles to the Dealer, BANK will complete its contractual obligation by purchasing replacement motor vehicles for lease from the same Dealer within a specified amount of time not exceeding nine (9) months after the trade-in date.
10. In an auction sale, BANK will offer numerous motor vehicles for online or physical auction as a disclosed principal to any automotive label or dealer. As part of the auction sale offer of an off-lease motor vehicle, BANK will also offer to become contractually obligated to purchase another motor vehicle from the same winning bidder within nine (9) months or less of the auction sale date. However, BANK desires to make this offer for contractual obligation only to bidders who are BANK's private label clients or Dealers. If, at the time of the completion of the auction sale, the winning bidder accepts BANK's offer, BANK will be contractually obligated to purchase a replacement vehicle from the same winning bidder. Subsequently, BANK will complete its contractual obligation by purchasing replacement motor vehicles from the same winning bidder. At its discretion, BANK may choose not to purchase replacement motor vehicles from the winning bidder and would, in that event, surrender its right to the related sales/use tax advance trade-in credit.
11. BANK plans to trade in numerous off-lease motor vehicles at auction sales. Due to the extensive documentation required for each advance trade-in credit, BANK will execute the required advance trade-in documentation within one business day after the date of each auction sale.
12. Under both the ordinary purchase/sales transaction and auction sale situations, BANK will execute the documentation required by Illinois to qualify for the advance trade-in credit. BANK's advance trade-in contract agreements will include the value or credit given for the traded-in vehicle, the obligation to purchase a replacement vehicle, and the date of expiration of the advance trade-in credit. In addition, the bill of sale for the traded-in vehicle will be prepared and proper Illinois sales/use tax returns will be filed to evidence the qualified trade-in transaction, subsequent purchase of a replacement vehicle and application of the advance trade-in credit.

Rulings Requested

On behalf of BANK, we respectfully request the Illinois Department of Revenue to rule on the following:

Whether the timing of one business day to execute the required Illinois advance trade-in documentation meets the requirements of the Illinois advance trade-in credit requirements pursuant to 86 Ill. Adm. Code 130.455(c)(2)(B) and (d), so long as at the time the vehicle is traded in to the Dealer, the transaction is identified as an advance trade-in and BANK is contractually bound to purchase a replacement vehicle from the same Dealer within nine (9) months after the date of the advance trade-in transaction?

Relevant Authorities

Illinois imposes a Retailers' Occupation Tax ('ROT') at the rate of 6.25% on the gross receipts of persons for the privilege of, 'selling at retail tangible personal property.' 35 Ill. Comp. Stat. 120/1; 35 Ill. Comp. Stat. 120/2; 35 Ill. Comp. Stat. 120/2-10. The ROT applies to the 'business of selling tangible personal property at retail in this State whether such property is new or used and regardless of how the seller may have acquired such property.' 86 Ill. Admin. Code § 130.425(f).

The Illinois Retailers' Occupation Use Tax [sic] ('UT') is imposed on persons using or storing tangible personal property purchased at retail from a retailer and is based on the selling price or fair market value of tangible personal property purchased. 35 Ill. Comp. Stat. 105/3-10; 86 Ill. Admin. Code § 150.101(a - b).

Generally, sales and purchases of motor vehicles are subject to the Illinois ROT and UT including the sale of used motor vehicles by leasing or rental businesses. 86 Ill. Admin. Code § 130.111(a).

The 'gross receipts' from the sales at retail are defined as the 'total selling price or the amount of such sales.' 35 Ill. Comp Stat. 120/1. The 'selling price' or 'amount of sale' means the 'consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property' and 'services, but not including the value of or credit given' for traded-in tangible personal property of like kind and character. *Id.* The phrase 'like kind and character' is liberally construed to include the trading of 'any form of motor vehicle for any form of motor vehicle, or any kind of farm or agricultural implement for any other kind of farm or agricultural implement,' while 'not including a kind of item which, if sold at retail by that retailer, would be exempt from Retailer's [sic] Occupation Tax and Use tax as an isolated or occasional sale.' 35 Ill. Comp Stat. 120/1; 86 Ill. Admin. Code § 130.425(b).

Illinois provides a trade-in credit for the value of traded-in tangible personal property on the purchase of tangible personal property of like kind and character, which is deductible from taxable gross receipts in determining the ROT. 86 Ill. Admin. Code §130.425(e).

For purposes of the trade-in credit:

. . . Dealer means any person engaged in the business of selling vehicles at retail.

Dealer Credit means an advance trade credit maintained on the books of the dealer where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade.

Lease means a true lease of a vehicle for a term of more than one year.

Lessee means any person that acquires possession of a vehicle pursuant to a lease.

Lessor means any person engaged in the business of leasing vehicles to other persons.

Purchaser means any person, whether an individual consumer or a lessor, that purchases a vehicle from a dealer. 86 Ill. Admin. Code §130.455(a).

A dealer may use the trade-in credit and 'reduce his gross receipts by the value of or credit given for a traded-in motor vehicle' in the following situations:

- a. An individual trades a motor vehicle he owns on the purchase of a new or used motor vehicle;
- b. A lessor trades a motor vehicle he owns on the purchase of a new or used motor vehicle for subsequent lease;
- c. A lessor or other purchaser trades a motor vehicle owned by a prospective lessee or a third party where the prospective lessee or third party assigns the vehicle to the dealer and provides written authorization for the trade to the dealer, for the benefit of the lessor or other purchaser. The written authorization provided by the prospective lessee or third party should be specific to the immediate transaction, identifying the vehicle to be purchased by the lessor or other purchaser. A prospective lessee or third party trade-in authorization may not be used in conjunction with an advance trade transaction; or
- d. A motor vehicle is traded-in as described in subsection (c)(1)(B) or (c)(1)(C) of this Section, and the dealer executes the lease but assigns the lease to a purchasing lessor, if the following requirements are part of the transaction:
 - i. The lease agreement states that the lease and vehicle will be assigned to the lessor making the trade of the motor vehicle, and
 - ii. Title is issued directly to the lessor making the trade of the motor vehicle and not to the dealer so that the dealer remains outside the chain of title. 86 Ill. Admin. Code §130.455(c)(1)(A) – D).

Illinois generally recognizes two types of trade-in transactions that qualify for the trade-in credit: (1) the 'simultaneous trade-in' and (2) the 'advance trade-in.' 86 Ill. Admin.

Code §130.455(e). A simultaneous trade-in means a trade-in which is ' offered at the time of the sales transaction.' *Id.* Illinois does not permit deferred trade-ins 'subsequent to the completion of the sales transaction.' *Id.*

The 'advance trade-in' is a transaction in which '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. Admin. Code § 130.455(d). Advance trade-in credits are not transferrable and expire if not used within 9 months or less of the contract date. An advance trade-in credit may be granted to a purchaser in the 'form of dealer credit or cash, and will not affect the purchaser's ability to apply the advance trade credit toward the purchase of one or more vehicles, so long as the purchaser is contractually obligated to purchase a vehicle from the dealer within the time specified. In completing the transaction, the purchaser may pay the dealer cash or other consideration for the purchase price of a [replacement vehicle].' *Id.*

An advance trade-in credit transaction must be documented to evidence the following:

1. the contract establishing the value of or credit given for a traded-in vehicle, the obligation to purchase a [replacement] vehicle, and the date of expiration of the advance trade-in credit;
2. the bill of sale for the traded-in vehicle; and
3. 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. Admin. Code § 130.455(d)(3).

Additionally, the advance trade-in credit documentation 'need not specify the make, model or purchase price of a vehicle to be purchased, only that the purchaser is under an obligation to purchase [a replacement vehicle] within the specified amount of time.' 86 Ill. Admin. Code § 130.455(d)(1). Furthermore, the dealer and purchaser must retain the documentation and records supporting the use of a trade-in credit for a purchase transaction and furnish it to the Illinois Department of Revenue (the 'Department') upon inspection or audit. 86 Ill. Admin. Code § 130.455(g).

Advance trade-ins generally are not available in auction situations. Ill. Private Letter Ruling ST 05-0008, Aug. 25, 2005. However, one exception exists 'when the seller of the motor vehicle at the time of the auction is a disclosed principal.' 86 Ill. Admin. Code § 130.1915(b). Specifically, advance trade-in credits are available in an auction setting when:

at or before the time of bidding, the seller offers to all bidders, as part of the sale of the motor vehicle, to become contractually bound to the winning bidder to purchase another motor vehicle from the winning bidder within 9 months from the date of the auction sale; the winning bidder accepts the seller's offer and the seller becomes contractually bound to

purchase another motor vehicle from that winning bidder within 9 months from the date of the auction sale; and all other requirements of Section 130.455(d) have been met. Ill. Dept. of Revenue Gen. Info. Ltr. ST 08-0120-GIL, Aug. 26, 2008.

A 'disclosed principal' is considered disclosed, 'when the name and address of such principal is made known to [the] purchaser at or before the time of the sale and when the name and address of the principal appears upon the books and records of the auctioneer or agent. A verbal announcement of the principals' names at the auction is not sufficient to document disclosure.' 86 Ill. Admin. Code § 130.1915(b). Other forms of sufficient disclosure include:

1. naming the principals and their addresses (city only is sufficient) in newspapers and other public advertising;
2. posting a written list of the principals' names and their addresses (city only is sufficient) at the auction site;
3. distributing sale bills or brochures that name the principals and their addresses (city only is sufficient);
4. recording the principals' name and addresses (city only is sufficient) on legal documents regarding the item that is sold, such as automobile titles; or
5. other methods that provide a permanent, written record of the disclosure of the names and addresses (city only is sufficient) of the principals. *Id.*

Discussion

BANK will qualify for the Illinois trade-in credit as a 'lessor [who] trades a motor vehicle he owns on the purchase of a new or used motor vehicle for subsequent lease.' 86 Ill. Admin. Code § 130.455(c)(1)(B).

For every advance trade-in credit transaction, the trading in of a vehicle will be identified as a trade-in transaction at the time of trade, evidenced in a contract agreement, bill of sale and reported as a qualified trade-in on the Form ST-556 Sales Tax Transaction Return. BANK's subsequent purchase of the replacement vehicle and use of the advance trade-in credit within nine (9) months of the trade-in date will also be reported on the appropriate Illinois sales/use tax return. As a result, BANK will be able to offset the selling price of the replacement vehicle with 'the value of or credit given for [the] traded-in vehicle' and the Dealer would be able to reduce his gross receipts by the same amount reported on his Illinois ROT return.' 86 Ill. Admin. Code § 130.455(c)(1).

BANK also will qualify for the Illinois advance trade-in credit by disclosing itself as a principal at the time of the auction by offering 'to become contractually bound to the [Dealer] to purchase another motor vehicle from the [same Dealer] within 9 months from the date of the auction sale' as part of the sale, and the [Dealer] accepts. Ill. Dept. of Revenue Gen. Info. Ltr. ST 08-0120-GIL, Aug. 26, 2008.

Time of Executing the Advance Trade-in Documentation

Based on the foregoing, BANK can execute the required advance trade-in credit documentation within a reasonable timeframe of one business day from the time of auction sale and still qualify for the Illinois advance trade-in credit so long as at the time the vehicle is traded to the Dealer, the transaction is identified as an advance trade-in and BANK is contractually bound to purchase a replacement vehicle from the Dealer within nine (9) months after the date of the advance trade-in transaction pursuant to 86 Ill. Admin. Code § 130.455(c)(2)(B) and (d). As part of BANK's program to use the Illinois advance trade-in credits, it will offer numerous off-lease vehicles for trade-in at each auction sale. Each auction sale trade-in transaction will be documented according to Illinois requirements in order for a taxpayer to qualify for the advance trade-in credit. Such required documentation includes '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.' 86 Ill. Admin. Code § 130.455(d)(3). As such, each type of document will need to be prepared for every trade-in transaction executed by BANK and the winning bidder. The preparation of the advance trade-in documents will necessitate a considerable amount of time due to the significant number of motor vehicles held for auction by BANK and the extensive volume of documents required by Illinois. Consequently, it would be infeasible for BANK to prepare all of the required documentation on the same day of the auction sale.

BANK's procedures for processing advance trade-in credit transactions will be extensive and require the following steps:

- 1) A Dealer bids and wins the purchase of an off-lease vehicle at an online or physical auction and simultaneously accepts BANK's offer to enter into an advance trade-in credit agreement;
- 2) The online or physical auctioneer completes the Advance Trade-in Credit Agreement;
- 3) The auctioneer submits the completed Advance Trade-in Credit Agreement signed by the Dealer and the bill of sale or auction receipt to BANK for review and execution;
- 4) BANK validates the information on the bill of sale or auction receipt regarding the advance trade-in credit vehicle's description, Vehicle Identification Number ('VIN'), mileage, and etc.;
5. BANK verifies that the trade-in vehicle is an eligible off-lease vehicle within an internal verification system (ICAF) using the VIN of the vehicle;
6. Upon verification, an officer of BANK signs off on the Advance Trade-in Credit Agreement and logs the pertinent information related to the advance trade-in transaction (i.e. vehicle year, model, mileage, VIN, trade-in value and date) in order to track the 9-month eligibility window of the credit;
7. BANK photocopies the executed Advance Trade-in Credit Agreement and maintains a copy for record keeping purposes; and

- 8) BANK returns the executed Advance Trade-in Credit Agreement to the Dealer.

When BANK receives the completed Advance Trade-in Credit Agreement and bill of sale or auction receipt from an auction sale on the last business day of the week or on a bank holiday, BANK's procedures for processing advance trade-credit transactions prohibit BANK from executing the required advance trade-in credit documentation at the time of the online or physical auction sale. Generally, BANK cannot complete its procedures until the next business day when it receives advance trade-in credit documentation from auction sales on the last business day of the week or on a bank holiday.

Moreover, in addition to physical auctions, BANK disposes of many of its off-lease motor vehicles using online auction services, which may occur during any time of the day, including times outside normal business hours. In offering advance trade-in transactions using online auction services, employees of BANK may not be available to execute the required documentation at the time of the online auction sale because it may not occur during normal business hours, even though the winning online auction bidder accepts BANK's offer to trade-in the off-lease motor vehicle, BANK is contractually obligated to purchase a replacement vehicle from the same Dealer, at the time the auction closes. Accordingly, it would be impractical to require that BANK execute all required advance trade-in credit documentation at the time of the online auction sale.

The Illinois advance trade-in credit may not be claimed by the dealer if the 'trade-in vehicle was disposed of in a sales transaction predating the trade but was not identified by contract or written agreement as an advanced trade-in vehicle.' 86 Ill. Admin. Code § 130.455(c)(2)(B). However, at the time of the auction, BANK identifies the auction sale transaction as an advance trade-in by offering to become contractually bound to purchase a replacement vehicle from the Dealer. Moreover, the winning bidder's acceptance of BANK's offer to become contractually bound to purchase a replacement vehicle from the Dealer within nine (9) months from the date of the auction sale effectively identifies the vehicle for auction as an advanced trade-in vehicle. By completing the auction sale in this manner, BANK is contractually committed to purchase a replacement vehicle from the Dealer who is the winning bidder. In a Private Letter Ruling issued in 2005, the Department stated that the 'date that begins the 9-month time period within which [the Taxpayer] is contractually obligated to make a purchase of a motor vehicle is the date when the original vehicle is traded-in by the seller to the dealer. The trade-in of vehicles occurs, at the time when the dealer becomes contractually bound to accept the trade-in vehicle from [the Taxpayer].' Ill. Private Ltr. Ruling ST 05-0008-PLR, Aug 25, 2005. Applying this same reasoning to the question presented by this request for ruling, the Dealer who wins the auction sale simultaneously accepts the trade-in of BANK's off-lease vehicle and causes BANK to become contractually obligated to purchase a replacement vehicle from the same Dealer. As such, if BANK executes the required advance trade-in documentation within a reasonable timeframe of one

business day of the time of auction sale, due to the number of motor vehicles auctioned and amount of documentation required, it will still qualify for the advance trade-in credit because the transaction is identified as an advance trade-in and BANK is contractually obligated to purchase a replacement motor vehicle from the winning bidder at the time the auction sale is completed.

Conclusion

We respectfully request that the Department issue a ruling stating that BANK will qualify for the Illinois advance trade-in credit if it executes the advance trade-in credit documentation within a reasonable timeframe of one business day from the time of the auction sale and meets all of the requirements in 86 Ill. Adm. Code 130.455(d) for the reasons stated above.

Procedural Matters

In the event that this Request does not provide sufficient information to support our conclusions, COMPANY2 requests an opportunity to provide additional information, if needed, to more fully state our position with respect to the foregoing. We reserve the right to rescind this ruling request in case an unfavorable determination is resulted. If you have any questions or require additional information, please call me at X or Ms. Z at X.

DEPARTMENT'S RULING:

There are generally two types of trade-ins regarding vehicles 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 is taken at the time of the transaction, then the transaction cannot later be changed to create a trade-in for sales tax purposes. 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 (i.e. the one trading the vehicle to the dealer) 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).

Advance Trade-ins and Online Vehicle Auctions

Generally, trade-in credits are not available in auction situations. The sale of a motor vehicle at an auction and the purchase of another vehicle at that auction are normally treated as separate sales and no trade-in is allowed. However, if

(i) the seller of the motor vehicle at the time of the auction is a disclosed principle as described in subsection (b) of 86 Ill. Adm. Code 130.1915,

(ii) at or before the time of bidding, the seller offers, as part of the sale of the motor vehicle, to become contractually bound to the winning bidder to purchase another motor vehicle from the winning bidder within 9 months after the date of the auction sale, and

(iii) the winning bidder accepts the seller's offer and that seller becomes contractually bound to purchase another motor vehicle from that winning bidder within 9 months after the date of the auction sale,

then the auctioned vehicle may be used by that seller as an advance trade-in on the purchase of another vehicle as long as all of the requirements of subsection (d) of Section 130.455 are met.

Auction Sales

The following is our understanding regarding auction sales. Auction situations are different from other sale transactions in that the seller may be known but the purchase is made from a pool of known or unknown buyers. Traditional negotiations between the parties regarding sale terms do not take place at auction sales. Except for the selling price, the auctioneer acting for itself or as an agent for a disclosed principle presents the auction sales agreement terms to the potential bidders. By registering for the auction and bidding on the auction items such bidders have agreed to the sale terms set forth by the auctioneer. Once the bidding on an items ends and a winning bidder is chosen, both the seller and buyer are contractually bound to the auction sale terms.

Physical Auctions

Under facts set out by BANK in your letter and our subsequent telephone conversation with a representative from BANK, if BANK can document that (i) the auctioneer, as agent for BANK, presented as part of the auction sale terms the advance trade in agreement terms as required under subsection (d) of Section 130.455 and (ii) required qualified bidders to accept such terms if they are chosen as the winning bidder, we believe that BANK and the winning bidder will be contractually bound to the advance trade-in agreement at the time that the auction closes (traditionally described as when the "gavel falls"). As long as BANK and the winning bidder are contractually bound by the sale terms when the auction closes, including the proper advance trade-in provisions, we believe that completing a written record memorializing the sale including the advance trade-in agreement within the next business day will not disqualify BANK from using that advance trade-in credit on the subsequent purchase of a vehicle from the winning bidder within 9 months.

Online Auctions

Based on information provided to the Department subsequent to the submission of this letter, it is the Department's understanding that steps 1 through 8 in the procedures described in this request for a Private Letter Ruling will be different for online auctions. For online auctions, the auction website will list the advance trade-in provisions being offered by BANK to its private label clients. As part of

submitting a bid to purchase the vehicle, private label clients who want to accept BANK's offer to enter into an advance trade-in agreement must also click a box acknowledging that they are a private label client and are also accepting BANK's offer to enter into an advance trade-in agreement if they are the winning bidder. For its part, BANK will provide a power of attorney to the online auction company authorizing it to sign the Advance Trade-in Agreement on behalf of BANK and submit it electronically to winning bidders who are private label clients and who acknowledged acceptance of BANK's advance trade-in offer at the time of submitting their bid. As with physical auctions, as long as BANK and the winning bidder are contractually bound by the sale terms when the auction closes, including the proper advance trade-in provisions, we believe that completing a written record memorializing the sale including the advance trade-in agreement within the next business day will not disqualify BANK from using that advance trade-in credit on the subsequent purchase of a vehicle from the winning bidder within 9 months after the date of the auction.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules, or the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Terry D. Charlton
Chairman, Private Letter Ruling Committee