

Federal excise taxes, such as the “gas guzzler tax”, which are imposed on the manufacturer of automobiles are not deductible when calculating Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.445. The “gas guzzler tax” is merely a cost of doing business to the person who pays such a tax or to the persons to whom the economic burden of such taxes may be shifted by those who pay such taxes to the Federal government. See 86 Ill. Adm. Code 130.410. (This is a GIL.)

October 19, 2015

Dear Xxxxx:

This letter is in response to your letter dated September 14, 2015, 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:

On September 2, 20XX I purchased a new CAR from COMPANY (See copy of invoice enclosed) The list price included a gas guzzler tax Of [sic] \$\$\$ imposed on the manufacturer and passed on the purchaser. My Illinois sales tax was calculated on the difference between my trade in and the list price including the gas guzzler tax. This amounts to a sales tax on a tax which does not seem fair to me.

Your current rules do not address the gas guzzler tax. According to Google, other states have determined the dealer should refund that part of the sales tax. Kindly give me your opinion on this matter as soon as you can.

DEPARTMENT’S RESPONSE:

The Retailers’ Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property for use or consumption. Retailers’ Occupation Tax is based upon the “selling price” of the tangible personal property sold. Section 1 of the Retailers’ Occupation Tax Act defines the term, “selling price,” as the “consideration for a sale valued in money ... and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever....” See 35 ILCS 120/1. As indicated by this definition, a retailer’s cost of doing business is not deductible from his or her gross receipts. This principle is articulated in Section 130.410 of the Department’s rules. This rule states that in

calculating Retailers' Occupation Tax liability, "labor or service costs" . . . "overhead costs" . . . "or any other expenses whatsoever" are not deductible from gross receipts. The rule provides that these costs of doing business are an element of a retailer's gross receipts subject to tax even if separately stated on the bill to the customer. See 86 Ill. Adm. Code 130.410.

The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 86 Ill. Adm. Code 150.101. A retailer maintaining a place of business in Illinois or a retailer authorized by the Department to collect Use Tax must collect Use Tax from a purchaser. Retailers must collect the tax from users by adding the tax to the selling price of tangible personal property. See 35 ILCS 105/3-45. Because the Retailers' Occupation Tax and the Use Tax work together in a complementary fashion, Section 2 of the Use Tax Act contains the equivalent definition of "selling price" that is contained in Section 1 of the Retailers' Occupation Tax Act. Selling price means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property... and services... See 35 ILCS 105/2.

When deciding the question about whether a particular tax is included in the selling price for computing Retailers' Occupation Tax, one must look at the statute or tax act to see upon whom the taxing government (whether federal, state or local) has placed the legal incidence of the tax. When the legal incidence of a tax is on the consumer, it is not considered to be part of the "selling price" of the tangible personal property for the purpose of calculating Retailers' Occupation Tax. On the other hand, when the legal incidence of a tax is not imposed on the consumer but is imposed at a higher level in the distribution chain, e.g. upon the manufacturer, importer, or distributor, then the amounts of the retail selling price of the tangible personal property that represents these taxes is includable in the base and cannot be deducted in computing Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.445.

Federal excise taxes, such as the "gas guzzler tax" are imposed on the manufacturers of automobiles and, thus, are not deductible in computing the Retailers' Occupation Tax liability from the gross receipts of persons who sell such automobiles at retail. The "gas guzzler tax" is merely a cost of doing business to the person who pays such a tax or to the persons to whom the economic burden of such taxes may be shifted by those who pay such taxes to the Federal government. See 86 Ill. Adm. Code 130.410.

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,

Debra M. Boggess
Associate Counsel

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