

Public Act 101-31 amended the definition of “selling price” in the Retailers’ Occupation Tax Act and the Use Tax Act to provide that, “beginning January 1, 2020, ‘selling price’ includes the portion of the value of or credit given for traded-in motor vehicles of the First Division as defined in Section 1-146 of the Illinois Vehicle Code of like kind and character as that which is being sold that exceeds \$10,000.” See 35 ILCS 105/2, 35 ILCS 120/1, and 86 Ill. Adm. Code 130.425. (This is a GIL.)

September 2, 2021

Dear NAME:

This letter is in response to your letter in which you requested 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:

We are requesting a Letter Ruling for clarification on the new sales tax changes dictated in Public Act 101-0031 in regards to the \$10,000 trade-in credit limit towards the amount subject to sales tax.

In a vehicle purchase transaction involving a trade in, there are multiple parts that can be negotiated separately or together. The tax code prior to 1/1/2020 figured tax on the difference between the vehicle purchased and the vehicle traded in. The new tax code puts a limit on the tax credit given on the vehicle being traded in.

Given that both sides of the purchase transaction are negotiable, can the buyer with an \$11,000 car to trade that is buying a \$21,000 vehicle state that they will accept less for their vehicle if an equal amount is taken off the vehicle being purchased? If we drop our price to \$20,000 and they accept \$10,000 for their trade in, the sales tax owed is less than if we stayed at at [sic] \$21,000 and gave them \$11,000 for the trade in.

1. Is there anything that says we or they can't negotiate a deal structured to pay as little sales tax as possible?

Example #1	\$21,000	sale price dropped to	\$20,000
	\$11,000	trade in value dropped to	\$10,000
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	\$10,000	balance due plus tax	\$10,000
	\$687.50	tax due	\$625.00

2. If it is acceptable to negotiate a small amount as shown in example #1 to structure for tax efficiency, is there an upper limit that they can negotiate? Customer has a \$40,000 vehicle to trade that they would accept \$10,000 for if we drop the price of our \$60,000 vehicle to an equally losing price of \$30,000.

Example #2	\$60,000	sale price dropped to	\$30,000
	\$40,000	trade in value dropped to	\$10,000
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	\$20,000	balance due plus tax	\$20,000
	\$3,125	tax due	\$1,250

The point being that dealers will routinely sell a vehicle at what looks like a loss if they a [sic] getting a vehicle traded in at a bargain to make up for that loss when it is sold. Sales tax on vehicle purchases had always been calculated on the difference between the vehicle bought and the vehicle traded because there is no way to manipulate the numbers to pay less tax. Under the new tax law, it appears that a customer can negotiate the structure of the sale in such a way that the \$10,000 tax credit limit doesn't apply. Is it acceptable to negotiate the purchase and trade numbers equally lower to pay the least amount of tax possible?

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. 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. These taxes comprise what is commonly known as "sales tax" in Illinois.

Retailers' Occupation Tax is measured by gross receipts from the sale of tangible personal property to end-users. See 35 ILCS 120/2-10. "Gross receipts" is defined as "the total selling price or the amount of such sales." See 35 ILCS 120/1. Use Tax is imposed on "the selling price . . . of the tangible personal property." See 35 ILCS 105/3-10. Before the enactment of Public Act 101-31, the Retailers' Occupation Tax Act and

Use Tax Act defined "selling price" or the "amount of sale," in relevant part, as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold" See 35 ILCS 105/2 and 35 ILCS 120/1. Public Act 101-31 amended the definition of "selling price" in the Retailers' Occupation Tax Act and the Use Tax Act to provide that, "beginning January 1, 2020, 'selling price' includes the portion of the value of or credit given for traded-in motor vehicles of the First Division as defined in Section 1-146 of the Illinois Vehicle Code of like kind and character as that which is being sold that exceeds \$10,000." This provision capped at \$10,000 the deduction allowed for the value of the trade-in of a first division motor vehicle when calculating tax on the sale of a motor vehicle. See 86 Ill. Adm. Code 130.425.

Section 4 of the Retailers' Occupation Tax provides that "[a]s soon as practicable after any return is filed, the Department shall examine such return and shall, if necessary, correct such return according to its best judgment and information." See 35 ILCS 120/4. While selling price and trade-in value have a subjective element, there are objective factors the Department uses when determining "selling price" reported on a return. To the extent the selling price or trade-in value listed on a return filed with the Department deviates from the objective values used by the Department, the Department will adjust the return and assess tax according to its best judgment and information.

In addition, any person engaged in the business of selling tangible personal property at retail in this State who files a fraudulent return is subject to criminal penalties under Section 13 of the Retailers' Occupation Tax Act. See 35 ILCS 120/13.

We note, however, that for sales that occur on or January 1, 2022, Public Act 102-353, removes the \$10,000 limit on the deduction that may be taken for trade-ins when calculating tax.

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,

Samuel J. Moore
Associate Counsel

COMPANY
Page 4
September 2, 2021

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