

ST 24-0037-GIL 11/07/2024 INTERSTATE COMMERCE/SALE FOR RESALE

This letter discusses sales into interstate commerce that originate in Illinois to locations outside Illinois never to return. Appropriate documentation must be obtained in support of sales in interstate commerce and for resale. See 86 Ill. Adm. Code 130.605 and 130.1405. (This is a GIL).

November 7, 2024

NAME
COMPANY
ADDRESS

Dear NAME:

This letter is in response to your letter dated October 23, 2024, 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 <https://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:

As holders of the Power of Attorney, we are writing on behalf of our client, NAME1, to request a General Information Letter or Private Ruling, as you may see fit, to resolve a Sales Tax impasse involving an automobile dealer in CITY, IL.

On September 10, 2024, NAME1 visited COMPANY1, to purchase an automobile he needed to export to one of his customers in the FOREIGN COUNTRY (his business consists of buying cars for export to that country). First, NAME1 wanted to purchase the vehicle using the name of a Dealership based in STATE, where he lives and conducts his business. However, still, the dealer insisted on selling the car to him as an individual, leaving him without a choice. Further, NAME1 objected to paying the sales

tax precisely because the car was not going to be licensed in Illinois but transported to STATE to be shipped to the FOREIGN COUNTRY. Again, NAME1 had no choice but to pay the sales tax.

After that, once the car was exported, we contacted the Department of Revenue to inquire about a refund of the sales tax paid. We were directed back to the dealer to ask that they amend their tax and refund our client. Although we supplied the dealer with complete documentation substantiating the automobile's destination, the dealer refused.

We are enclosing the Power of Attorney and a copy of the documentation we supplied COMPANY1 with to assist you in issuing the appropriate letter we would need.

Thank you in advance for your cooperation on this matter.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. Thus, when tangible personal property is located in this State at the time of its sale and then delivered in Illinois to the purchaser, the seller is taxable if the sale is at retail.

Interstate Commerce

Where tangible personal property is located in this State at the time of its sale (or is subsequently produced in Illinois), and then delivered in Illinois to the purchaser, the seller is taxable if the sale is at retail. The sale is not deemed to be in interstate commerce if the purchaser or his representative receives the physical possession of the property in this State. This is so notwithstanding the fact that the purchaser may, after receiving physical possession of the property in this State, transport or send the property out of the State for use outside the State or for use in the conduct of interstate commerce. 86 Ill. Adm. Code 130.605(a).

There are three exceptions to the rule that the sale is not deemed to be a sale in interstate commerce if the purchaser or his representative receives physical possession of the property in Illinois. One exemption from sales tax is for the purchase of a vehicle in Illinois by a nonresident when the vehicle will not be titled in this State. See 86 Ill. Adm. Code 130.605(b)(1). To claim the exemption, the retailer must keep documentary evidence that the purchaser is not a resident of Illinois. The documentation required to

prove non-residency is specified in 86 Ill. Adm. Code 130.605(b)(1)(A)(i) and (ii). If the retailer meets the document requirements of either subsection (b)(1)(A)(i), or (ii) then, absent fraud, the Department shall pursue any claim that the exemption does not apply solely against the vehicle purchaser. However, the exemption under 86 Ill. Adm. Code 130.605(b)(1) does not apply if the state in which the motor vehicle will be titled does not allow a reciprocal exemption for a motor vehicle sold and delivered in that state to an Illinois resident when the vehicle will be titled in Illinois. *Id.* at (b)(1)(C). STATE is not a reciprocal state.

The documentation you provided to the Department shows on its face that the car was being purchased by a STATE resident. A retailer is not required to honor a purchaser's claim of an exemption if the retailer is not convinced that the retail sale qualifies for the exemption.

The tax does not extend however to gross receipts from sales in which the seller is obligated, under the terms of their agreement with the purchaser, to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to a point within this State, provided that the delivery is actually made. The tax does not apply to gross receipts from sales in which the seller, by carrier (when the carrier is not also the purchaser) under the terms of their agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State. The fact that the purchaser actually arranges for the common carrier or pays the carrier that effects delivery does not destroy the exemption. However, it is critical that the seller is shown as the consignor or shipper on the bill of lading. If the purchaser is shown as either the consignor or the shipper, the exemption will not apply. Sales of these type are deemed to be within the protection of the Commerce Clause of the Constitution of the United States. 86 Ill. Adm. Code 130.605(c)-(e).

Sales for Resale

There is also an exemption for sales for resale. In order to document that a sale to a purchaser is a sale for resale, a seller must obtain a valid Certificate of Resale from the purchaser. See 86 Ill. Adm. Code 130.1405. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. In addition to the statement that the property is being purchased for resale, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) The purchaser's name and address;
- 3) A description of the items being purchased for resale;
- 4) Purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing; and

- 5) Registration Number, Resale Number, or a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

The Department provides a standard form for documenting sales for resale (Form CRT-61 Certificate of Resale). This form can be obtained from the Department's website.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item themselves (i.e., it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided the above stated conditions are met. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all the seller's sales are sales for resale or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois. The risk run by a retailer in accepting such other documentation and the risk run by purchasers in providing such other documentation is that an Illinois auditor is more likely to require that more information be provided as evidence that the sale was, in fact, a sale for resale.

Claim for Refund

Since the dealership paid the sales tax directly to the Department, the dealership is the only party withstanding to file a claim regarding an overpayment of the tax. See 86 Ill. Adm. Code 130.1501. A retailer's determination as to whether it will make a refund of the amount of the tax to a customer and file a claim for credit with the Department is a matter between the retailer and their customer. The Department has no authority to compel a retailer to refund taxes to a customer and file a claim for credit.

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at (217) 782-3336.

NAME1/COMPANY
Page 5
November 7, 2024

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:slc