

Persons who are engaged in the business of renting automobiles in Illinois under rental terms of one year or less are subject to the Automobile Renting Occupation and Use Tax set forth at 35 ILCS 155/1 et seq. See 86 Ill. Adm. Code 180.101. (This is a PLR.)

May 19, 2025

NAME, TITLE
LOCAL GOVERNMENT
ADDRESS

Dear NAME:

This letter is in response to your letter dated February 10, 2025, 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.

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 the Wauconda Park District, 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 the Wauconda Park District, 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:

My name is NAME, and I am the TITLE of the LOCAL GOVERNMENT (“LOCAL GOVERNMENT”). I am writing this letter requesting a private letter ruling from the Illinois Department of Revenue (the “Department”) concerning the applicability of the Automobile Rental Tax (“Rental Tax”) to the LOCAL

LOCAL GOVERNMENT

Page 2

May 19, 2025

GOVERNMENT'S rental to customers of certain watercraft that are registered with the Illinois Department of Natural Resources ("IDNR").

The issue this letter seeks to resolve is whether or not IDNR registered watercraft are considered "automobiles" under the Rental Tax?

To the best of the LOCAL GOVERNMENT'S knowledge:

- 1) this issue is not a part of a Department audit of the LOCAL GOVERNMENT ;
- 2) the LOCAL GOVERNMENT is not involved in litigation where the Department is a name plaintiff or defendant;
- 3) there is no dispositive case law or regulation on this issue;
- 4) the Department has not previously ruled on the same or similar issue for the LOCAL GOVERNMENT; and
- 5) The LOCAL GOVERNMENT has not previously requested a letter from the Department on this issue.

The relevant tax period at issue is DATE to the present.

The statement of facts for this issue are as follows:

The LOCAL GOVERNMENT owns four watercraft: 1) WATERCRAFT 1; 2) WATERCRAFT 2; 3) WATERCRAFT 3; and 4) WATERCRAFT 4. All of these watercrafts have certificates of title registered with IDNR, and those titles are provided with this letter.

In DATE, the LOCAL GOVERNMENT purchased a marina, MARINA, and certain personal property including the aforementioned watercraft. Since then, the LOCAL GOVERNMENT has offered customers the opportunity to rent the above-described watercraft, for a fee, to use on LAKE. The business reason the LOCAL GOVERNMENT offers such rentals is to enhance recreational opportunities to residents and guests. An incidental reason is to produce revenue. The customers complete a rental agreement, a copy of which is attached to this letter, that requires them to provide certain personal information, sign a waiver of liability, and to provide the LOCAL GOVERNMENT a security deposit for the rental of the watercraft. These rentals last up to four hours and only occur on the LOCAL GOVERNMENT'S normal business days and business hours. These rentals never last overnight. No training is required to rent the watercraft, but the customer must be 21 years old or older.

The Rental Tax imposes a 5% tax of the gross receipts received on persons engaged in the business of renting **automobiles**. 35 ILCS 155/3 (emphasis

added). Since DATE, the LOCAL GOVERNMENT has been paying the Rental Tax to the Department for gross receipts generated from the rental of its watercraft on LAKE. There is no dispute the LOCAL GOVERNMENT is in the business of renting its watercraft. The question this letter seeks to resolve is whether the LOCAL GOVERNMENT'S registered watercraft are "automobiles" subject to the Rental Tax.

Under the Rental Tax, "automobile" means:

(1) any motor vehicle of the first division, or (2) a motor vehicle of the second division which: (A) is a self-contained motor vehicle designed or permanently converted to provide living quarters for recreational, camping or travel use, with direct walk through access to the living quarters from the driver's seat; (B) is of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers as defined in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5/1-146]; or (C) has a Gross Vehicle Weight Rating, as defined in Section 1-124.5 of the Illinois Vehicle Code [625 ILCS 5/1-124.5], of 8,000 pounds or less. 35 ILCS 155/2

This issue then hinges upon whether the LOCAL GOVERNMENT'S watercraft are "any motor vehicle" of the first or second division described above.

It is the LOCAL GOVERNMENT'S opinion that the Rental Tax does not apply to the LOCAL GOVERNMENT'S rental of its registered watercraft because the watercraft are not motor vehicles of the first or second division. The LOCAL GOVERNMENT believes this because the main statutory provision that defines motor vehicles of the first and second division, the Vehicle Code, does not apply to vehicles that neither move on land nor are registered with the Secretary of State.

Authorities in favor of the LOCAL GOVERNMENT'S position include the following:

- Courts must interpret statutes under their plain language. The fundamental objective of statutory construction is to ascertain and give effect to the intent of the legislature. The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning. A court will not depart from the plain statutory language by reading into it exceptions, limitations, or conditions that conflict with

the expressed intent of the legislature. *USF Holland, Inc. v. Radogno, Cameli, & Hoag, P.C.*, 2014 IL App (1st) 131727, 58

- The Vehicle Code defines the term “vehicle” as “every device, in, upon or by which any person or property is or may be transported or drawn **upon a highway or requiring a certificate of title under Section 3-101(d) [625 ILCS 5/3-101] of [the Vehicle Code]**, except devices moved by human power, devices used exclusively upon stationary rails or tracks, and snowmobiles as defined in the Snowmobile Registration and Safety Act.” 625 ILCS 5/1-217 (emphasis added).
- The above definition raises two points. First, watercraft is defined in the Boat Registration and Safety Act which means watercraft used or capable of being used as a means of transportation on water, not a highway. 625 ILCS 45/1-2. Second, the Vehicle Code requires certification of title to be registered with the Illinois Secretary of State. 625 ILCS 5/3-101. However, watercraft title registration is conducted by the IDNR, not the Secretary of State. IDNR Illinois Registered Watercraft, <https://dnr.illinois.gov/boating/illinoisregistered.html>. (last accessed February 10, 2025 10:16 am). Taking these two points together, under the Vehicle Code, a watercraft is not a vehicle at all.
- IDOR’s own advice on who must register for the Rental Tax suggests watercraft are not an intended term encompassed by the Rental Tax. IDOR’s guidance states a taxpayer must register if they “lease or rent automobiles, pickup trucks, sport utility vehicles (SUVs), motorcycles and motor-driven cycles, qualifying motor homes or recreational vehicles, or qualifying vans for periods of one year or less.” IDOR Automobile Renting Occupation & Use Taxes, <https://tax.illinois.gov/research/taxinformation/sales/auto.html> (last accessed February 6, 2025, 4:52 pm). While IDOR’s published answers to frequently asked questions is not legal precedent, watercraft are an entirely different class of vehicle than those listed. If watercraft were currently subject to the Rental Tax, surely IDOR would have listed such vehicles as being subject to the Rental Tax.

In sum, the authorities supporting the LOCAL GOVERNMENT’S interpretation of the issue state (a) the plain language of the Rental Tax applies to automobiles, (b) watercraft do not fall within the definition of vehicle as defined by the Vehicle Code, and (c) conditions should not be read into the plain language of the Rental Tax to include watercraft where they are not explicitly listed.

Authorities against the LOCAL GOVERNMENT'S position include the following:

- Tax exemptions are strictly construed, and courts must resolve any doubts regarding an exemption's applicability in favor of taxation. Under Illinois law, taxation is the rule. The party seeking tax exemption bears the burden of proving the right to exemption, and in determining whether the property is subject to the exemption, the court must construe all facts and debatable questions in favor of taxation. This standard applied by courts places the burden on the LOCAL GOVERNMENT to prove the Rental Tax does not apply and creates a presumption towards taxation. *Safety-Kleen Sys. V. Dep't of Revenue*, 2020 IL App (1st) 191078, ¶ 18.
- The Vehicle Code defines "motor vehicle" as every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power, motorized wheelchairs, low-speed electric bicycles, and low-speed gas bicycles. 625 ILCS 5/1-146. First division motor vehicles are designed to carry not more than 10 persons and second division moto vehicles are designed to carry more than 10 persons including those that are designed for living quarters and carrying cargo. *Id.*
- The Rental Tax defines automobile as "any" motor vehicle of the first or second division (as described in preceding paragraphs). The LOCAL GOVERNMENT'S watercraft are propelled by motor. In that sense, they are self-propelled. If watercraft are determined to be motor vehicles, then they would likely qualify as automobiles under the Rental Tax and be subject to taxation. While the LOCAL GOVERNMENT'S argument, described above, is that watercraft are not vehicles under the Vehicle Code at all, there is an absence of statutory law, case law, or Department regulations that affirmatively state the LOCAL GOVERNMENT'S position. This letter is meant for the Department to either affirm or deny the LOCAL GOVERNMENT'S position.

Other than the LOCAL GOVERNMENT'S taxpayer ID and private information redactable under 7(1)(b) of the Freedom of Information Act, there are no trade secrets contained in this letter.

Thank you, and I look forward to the Department's response.

DEPARTMENT'S RESPONSE:

Persons who are engaged in the business of renting automobiles in Illinois under rental terms of one year or less are subject to the Automobile Renting Occupation and Use Tax. 35 ILCS 155/1 et seq. See 86 Ill. Adm. Code 180.101. This tax is imposed at the rate of 5% of the gross receipts from such business. "Gross receipts" means all consideration received by a rentor as the rental price for the rental of automobiles under lease terms of one year or less. Where a rentor receives the rental price in installment payments, the rentor shall include the amounts of such payments only as and when the payments are received by the rentor. 86 Ill. Adm. Code 180.120(a). Certain separately stated charges, though, are not subject to tax and are listed in Section 180.125 of the Department's regulations.

The tax applies to automobiles, defined in Section 2 of the Act as follows:

"Automobile" means (1) any motor vehicle of the first division, or (2) a motor vehicle of the second division which: (A) is a self-contained motor vehicle designed or permanently converted to provide living quarters for recreational, camping or travel use, with direct walk through access to the living quarters from the driver's seat; (B) is of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers, as defined in Section 1-146 of the Illinois Vehicle Code; or (C) has a Gross Vehicle Weight Rating, as defined in Section 1-124.5 of the Illinois Vehicle Code, of 8,000 pounds or less. 35 ILCS 155/2.

Section 1-146 of the Illinois Vehicle Code defines the term "motor vehicle" as:

Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power, motorized wheelchairs, low-speed electric bicycles, and low-speed gas bicycles. For this Act, motor vehicles are divided into two divisions:

First Division: Those motor vehicles which are designed for the carrying of not more than 10 persons.

Second Division: Those motor vehicles which are designed for carrying more than 10 persons, those motor vehicles designed or used for living quarters, those motor vehicles which are designed for pulling or carrying freight, cargo or implements of husbandry, and those motor vehicles of the First Division remodelled for use and used as motor vehicles of the Second Division. 625 ILCS 5/1-146.

Section 1-217 of the Illinois Vehicle Code defines the term “vehicle” in relevant part as:

Every device, in, upon or by which any person or property is or may be transported or drawn upon a highway . . . , except devices moved by human power, devices used exclusively upon stationary rails or tracks, and snowmobiles as defined in the Snowmobile Registration and Safety Act. 625 ILCS 5/1-217.

Section 1-126 of the Illinois Vehicle Code defines the term “highway” as:

The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel or located on public school property. 625 ILCS 5/1-126.

A boat does not meet the definition of “automobile” under the Automobile Renting Occupation and Use Tax Act since it is not a “vehicle” because it is not “transported or drawn upon a highway” as provided in the incorporated provisions of the Illinois Vehicle Code. Therefore, gross receipts from the rental of a boat are not subject to the Automobile Renting Occupation and Use Tax Act.

We note also that boats are excluded from recent legislation (see Article 75 of Public Act 103-592) imposing Retailers’ Occupation Tax Act on the gross receipts from leases and rentals.

With respect to taxes previously paid, if a taxpayer pays an amount of tax under the Automobile Retailing Occupation and Use Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. See 86 Ill. Adm. Code 130.1501 as incorporated into the Automobile Renting Occupation and Use Tax administrative rules at 86 Ill. Adm. Code 180.145. Please note that only persons who have actually paid tax to the Department can file a claim for credit. No credit shall be given to the taxpayer unless the taxpayer shows that he or she has borne the burden of the tax or has unconditionally repaid the amount of the tax to the purchaser from whom it was collected. In other words, if a renter has collected tax from a customer, the renter must show that it has unconditionally refunded the tax to the customer before credit will be allowed.

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

LOCAL GOVERNMENT

Page 8

May 19, 2025

earlier if there is a pertinent change in statutory law, case law, rules or in 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) 782-7055. If you have further questions related to the Illinois sales tax laws, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at (800) 732-8866.

Very truly yours,

A handwritten signature in black ink, reading "Samuel J. Moore". The signature is written in a cursive style with a large, stylized "S" and "M".

Samuel J. Moore
Chairman, Private Letter Ruling Committee

SJM:sce