Motor Vehicle, Aircraft and Watercraft Sales and Purchases Chapter Index

Purpose

This chapter will differentiate between sales and purchases made by individuals, businesses and other entities and sales by Illinois dealers. It will identify the various types of dealers and dealerships and any unique issues or aspects of each type of dealer. It will also discuss the types of taxes, the reporting forms for each tax and when they are applicable.

Audits of vehicle dealers (i.e., cars, trucks, vans, motorcycles, all-terrain vehicles (ATVs), utility task vehicle (UTVs), buses, aircraft, watercraft, mobile or motor homes, trailers, and snowmobiles) are generally considered to be complex audits because of a multitude of issues involved in determining the actual selling price of the vehicle. These issues include trade-ins, advance trade-ins, customer rebates, dealer cash incentives, discounts, over-allowances, interim use, leases, service, warranty work, maintenance agreements, exempt purchases, out-of-state purchasers, etc.

Disclaimer

This audit manual is designed for internal staff-use only and is intended to provide general information on selected topics to assist Illinois Department of Revenue ("Department" or "IDOR") auditors in the completion of their audits. The contents of this audit manual must not be relied upon for decision making or as a substitute for the official text of statutes, administrative rules, and case law. This manual does not carry the weight or effect of law and is only informational in nature. Auditors must conduct audits in accordance with the pertinent statutes, administrative rules, and case law.

Citations to statutes, regulations, or case law are included to assist the auditors in locating the relevant legal authority as a basis for conducting audits. The manual may be amended at any time without notice by the Department. Nothing in this manual shall contradict the official text of statutes, administrative rules, or case law. In case of any unintended inconsistency, the official text of statutes, administrative rules, and case law controls and must be followed. The Department's Director, General Counsel, and Legal Services Bureau do not sanction any deviation by the Department staff from the official text of statutes, administrative rules, or case law in the performance of job functions.

This manual does not constitute written legal advice or guidance from the Department or its staff to taxpayers or the general public, nor does it give rise to any claim under the Taxpayers' Bill of Rights.

12.1.1 Overview

Dealers, individuals, and other entities that sell and purchase tangible personal property that are required to be titled or registered by an agency of Illinois state government, such as motor vehicles, watercraft, aircraft, trailers, snowmobiles and manufactured (mobile) homes, or motor homes, must report these sales and pay the appropriate tax to the Illinois Department of Revenue ("Department").

Per the Illinois Secretary of State ("SOS"), a vehicle dealer is any person engaged in the business of selling or dealing in, on consignment or otherwise, new vehicles of any make or five or more used vehicles of any make during the year, or who acts as an intermediary, agent, or broker for any licensed dealer or vehicle purchaser other than a salesperson, or who represents or advertises that he/she is engaged in or intends to engage in such a business. See 625 ILCS 5/5-101 and 5/5-102. Requirements for vehicle dealers can be found in the Illinois Vehicle Code (625 ILCS 5/5-101 and 5-102). Brokers and wholesalers must meet the same requirements.

As a general rule, if someone is required to be registered with the Secretary of State as a vehicle dealer, they must be registered as a retailer with the Illinois Department of Revenue. Notwithstanding the Secretary of State requirements for a person to be registered as a dealer, the Department of Revenue takes the position that anyone who purchases any item, including motor vehicles, with the intent to resell that item for use or consumption, is considered to be a retailer. To verify a company is registered with the Secretary of State, search for the company's name on the Secretary of State's website under the Corporation/LLC Search. (https://apps.ilsos.gov/corporatellc/)

Dealers who sell items that are required to be titled or registered by an agency of Illinois state government, such as motor vehicles, watercraft, aircraft, trailers, and manufactured (mobile) homes at retail within Illinois, must report these sales to the Department on Form ST-556 (Transaction Return) or ST-556-LSE (Transaction Return for Leases) depending on what type of sales occur.

Motor vehicles that are leased from a registered Illinois leasing company, lending agency, or retailer must be reported on Form ST-556-LSE. If the Illinois leasing company, lending agency, or retailer is not registered, the purchaser is responsible for filing Form RUT-25-LSE, Use Tax Return for Lease Transactions, and paying the use tax on the transaction to the Department.

Dealers may also be required to file the ST-1 Sales and Use Tax and E911 Surcharge Return on any service repair parts used as incident of repair service (Service Occupation Tax liability, 86 Ill. Adm. Code 140.141) or over-the-counter sales made to customers (Retailers' Occupation Tax liability, 86 Ill. Adm. Code 130.2015).

12.1.2 Sales by a Broker/ Agent

Private Party/Individual – If the sale is performed by a broker/agent, the broker/agent does not take title of the vehicle, and the seller of the item is an individual or private party who is not a dealer, the purchase is subject to Vehicle Use Tax. The purchaser must file Form RUT-50, Private Party Vehicle Use Tax Transaction Return, or, in the case of an aircraft (watercraft), the purchaser is subject to the Aircraft Use Tax (Watercraft Use Tax) and the purchaser must file Form RUT-75, Aircraft/Watercraft Use Tax Transaction Return, by the required due date.

Dealer – If a broker/agent sells a vehicle on the behalf a dealer who does not transfer the title of the motor vehicle or tangible personal property to the broker/agent, the seller of the motor vehicle is considered the dealer. This type of sale/purchase is subject to tax. The sale is either reported on Form ST-556 (by the Illinois registered dealer) or RUT-25 (by the Illinois resident on purchases from an out-of-state dealer) and filed by the required due date. In addition, Illinois dealers should also collect and remit tax on nonresidents from states with which Illinois does not have a reciprocal exemption. A list of these states and applicable rates can be found on the ST-58, Reciprocal - Non-Reciprocal Vehicle Tax Rate Charts.

Broker/Agent – If the broker/agent takes title to the motor vehicle, the seller of the vehicle is the broker/agent. The purchase is subject to tax, and the sale is reported on either Form ST-556 (by the Illinois registered dealer) or RUT-25 (by the Illinois resident on purchases from an out-of-state dealer) and filed by the required due date.

See 86 Ill. Adm. Code 130.1915, Auctioneers and Agents.

12.1.3 Retailers of Manufactured Homes

Retailers of manufactured (mobile) homes sell those items either **with installation** (e.g., the retailer installs the manufactured (mobile) home or incorporates the manufactured (mobile) home into real estate) or **without installation** (e.g., the retailer does not install or incorporate the manufactured (mobile) home into real estate). The way in which the sale of a manufactured (mobile) home is taxed depends upon which of these two situations applies.

A manufactured (mobile) home is considered to be installed or incorporated into real estate when it is placed on a permanent foundation with its wheels, tongue, and hitch removed.

When a retailer sells a manufactured (mobile) home **with installation** or incorporates it into real estate, the retailer is acting as a construction contractor, and would report the sale on Form ST-1, based on their cost price. In Illinois, construction contractors are considered the end user of an item, rather than the person for whom the construction is being performed. Additional information regarding Construction Contractors is in Sales Tax Audit Manual Chapter 13. (See also 86 Ill. Adm. Code 130.2075).

When a retailer sells a manufactured (mobile) home **without installation** to someone who will subsequently install or incorporate the manufactured (mobile) home into real estate in Illinois (e.g., a contractor) or to a purchaser who will subcontract the installation or incorporation of the manufactured (mobile) home into real estate in Illinois, the retailer would report the sale on Form ST-556.

"Advance Trade Credit" means a trade-in credit earned as the result of the trade-in of a vehicle on the future purchase of a vehicle where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade. 86 Ill. Adm. Code 130.455.

"Aircraft" means any device used or designed to carry humans in flight as specified by the Department of Transportation by rule. All devices required to be licensed as "aircraft" by the Federal Aviation Administration (FAA) are “aircraft” (e.g., airplanes, helicopters). [620 ILCS 5/3].

“Auctioneer” means a person or entity who, for another, for a fee, compensation, commission, or any other valuable consideration at auction or with the intention or expectation of receiving valuable consideration by the means of or process of an auction or sale at auction or providing an auction service, offers, negotiates, or attempts to negotiate an auction contract, sale, purchase, or exchange of goods, chattels, merchandise, personal property, real property, or any commodity that may be lawfully kept or offered for sale by or at auction. [225 ILCS 407]. 86 Ill. Adm. Code 130.1915(c)(4)(A).

“Internet Auction Listing Service” means a website on the Internet, or other interactive computer service, that is designed to allow or advertise as a means of allowing users to offer personal property or services for sale or lease to a prospective buyer or lessee through an online bid submission process using that website or interactive computer service and that does not examine, set the price, prepare the description of the personal property or service to be offered, or in any way utilize the services of a natural person as an auctioneer. [225 ILCS 407]. 86 Ill. Adm. Code 130.1915(c)(4)(B).

Manufactured homes ("Mobile homes") means a factory-assembled structure built on a permanent chassis, transportable in one or more sections in the travel mode, incapable of self-propulsion, bears a label indicating the manufacturer's compliance with the United States Department of Housing and Urban Development standards, as applicable, and is designed for year-round occupancy as a single-family residence when connected to approved water, sewer, and electrical utilities. 625 ILCS 5/55-901.

“Motor vehicles” are defined in the Illinois Motor Vehicle Code (625 ILCS 5/1-146).

- First Division motor vehicles are “those motor vehicles which are designed for the carrying of not more than 10 persons” such as automobiles, passenger vans, etc.

- Second Division motor vehicles are “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 remodeled for use and used as motor vehicles of the Second Division” (such as pickup trucks, straight trucks, power units, vans, and all other motor vehicles), and trailers without motive power in operation (such as boat trailers, semi-trailers, full trailers, and travel trailers). (See also 625 ILCS 5/1-209).

- Motorcycles are also motor vehicles per 625 ILCS 5/1-147.

“Watercraft" has the meaning prescribed in Section 15-5 of the Watercraft Use Tax Law [625 ILCS 158/15-5]. "Watercraft" means any watercraft 16 feet or greater in length, except kayaks and canoes.

"Watercraft" includes any "personal watercraft" as defined in Section 1-2 of the Illinois Boat Registration and Safety Act [625 ILCS 45/1-2]. An example of a "personal watercraft" is a jet ski, regardless of its size or length. 86 Ill. Adm. Code 153.101.

- When an ownership share of a watercraft is acquired, the tax is imposed on the purchase price of that share. All owners are jointly and severally liable for any tax due as a result of the purchase, gift, or transfer of an ownership share of the watercraft. [35 ILCS 158/15-5]

- In the case of a share of a watercraft acquired by gift between family members, no tax is due unless it appears from the facts and circumstances that the primary motivation of the share transfer was the avoidance of tax. 86 Ill. Adm. Code 153.110

Proof of tax paid or non-liability must be submitted to the Secretary of State's Office at the time of application for Certificate of Title for motor vehicles, motorcycles, all-terrain vehicles, motor homes, manufactured (mobile) homes, and trailers.

Proof of tax paid or non-liability must be submitted to the Illinois Department of Natural Resources at the time of application for Certificate of Title and registration for watercraft and snowmobiles. Finally, proof of tax paid or non-liability must be submitted to the Illinois Department of Transportation, Division of Aeronautics at the time of application for Registration of Federal Aircraft Certification for aircraft that will be navigated within Illinois. The Illinois Department of Revenue is responsible for the administration and collection of these taxes.

12.3.1 Return Requirements

The Retailers' Occupation Tax Act (35 ILCS 120/3) and the Use Tax Act (35 ILCS 105/9) were amended requiring all returns filed pursuant to these acts, including, but not limited to, returns for motor vehicles, watercraft, aircraft, trailers, and manufactured (mobile) homes that are required to be registered with an agency of this State be filed electronically with respect to retailers whose annual gross receipts average $20,000 or more, effective January 1, 2023, on Form ST-556, Sales Tax Transaction Return and Form ST-556-LSE, Transaction Return for Leases.

12.3.2 Sales Tax Transaction Returns

ST-556

Retailers in the business of selling items at retail that are normally required to be titled or registered by an agency of Illinois state government (i.e., vehicles, watercraft, aircraft, trailers, and mobile homes) must file Form St 556, Sales Tax Transaction Return. In most cases, the Illinois dealer will submit the tax return along with the Application for Title to the Secretary of State Office. Tax is due on the sale of an item in Illinois regardless of whether an application for title or registration is submitted. The tax rate is determined by the location of the dealer.

The "selling price" would include accessories, federal excise taxes (Federal excise tax, if separately stated on the invoice, is not taxable on trucks over 33,000 pounds, trailers or semitrailer chassis weighing 26,000 pounds or more), freight, labor, dealer preparation, documentary fees, and any rebates or incentives for which a dealer receives reimbursement. Selling price does not include federal luxury tax. In general, any cost passed on to the customer as part of the sale of an item and for which gross receipts are received should be included in the selling price.

The "selling price" of a vehicle does not include *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. However, beginning January 1, 2020, and until January 1, 2022, "selling price" included 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. 86 Ill. Adm. Code 130.455.

All retail sales of items required to be titled or registered by an agency of Illinois state government are required to be reported on form ST-556 including sales exempt from taxation (e.g., out-of-state residents, vehicles delivered out-of-state, resale, etc.). If the taxpayer fails to file a return, then a $100 late filing penalty (See also Section 12.24 in this Chapter) or late filing penalty (See also Publication 103, Penalties and Interest for Illinois Taxes) may be applied during an audit on each transaction that was not filed.

Out-of-state lessors selling (not leasing) used motor vehicles with passenger plates when the vehicles are located in Illinois at the time of the sale must be registered with the Department and report these sales on Form ST-556. This situation will occur most often when a motor vehicle is sold to an Illinois lessee at the end of a lease. (See ST-556(2), Sales Tax Transaction Return Instructions for Leasing Companies Selling at Retail instructions)

Retailers of Manufactured Homes — When a retailer permanently affixes or incorporates a mobile home into real estate, that retailer is acting as a construction contractor and owes Use Tax on the cost of the manufactured (mobile) home and other items that become part of real estate. Receipts and tax due must be reported on Form ST-1, Sales and Use Tax Return or they may pay the Use Tax to their vendor when purchasing the items. (See Sales Tax Audit Manual Chapter 13, Construction and Non-Construction Contractors) (86 Ill. Adm. Code 130.1940 and 130.2075)

ST-556-LSE

Form ST-556-LSE, Transaction Return for Leases, is used if the dealer leases vehicles at retail in Illinois and those items are of the type that must be titled or registered by an agency of Illinois state government (i.e., vehicles, watercraft, aircraft, trailers, and manufactured (mobile) homes). The tax rate is determined by the location of the dealer.

12.3.3 Supporting Forms For ST-556/ ST-556-LSE

LSE-1

Form LSE-1, Tax Return for Vehicle Leasing Companies, must be completed to report additional reportable amounts that were not included in the original selling price of the motor vehicle at the start of the lease. Form LSE-1 is used to calculate tax due on any additional reportable amount that was not previously reported on either Form RUT-25-LSE or Form ST-556-LSE. Examples of additional reportable amounts include charges for excess wear and tear, excess mileage charges, and lease payments not reported on the original return. This return must be filed by the leasing company that has been leasing an item that is titled or registered in Illinois. Form LSE-1 is filed on a monthly basis and includes the additional taxable amounts from all leases for that month. (See Informational Bulletin FY 2015-03 Leased Motor Vehicle Changes and New Reporting Requirements) Form LSE-1 must be filed electronically at MyTaxIllinois.

ST-556-D

Form ST-556-D is an optional bulk filing method to report exempt sales for resale of previously rented or leased vehicles. Taxpayers still have the option of reporting these same sales

individually using Form ST-556, Sales Tax Transaction Return. The taxpayer should retain any records that verify each sale for resale, such as a copy of the rental agreement, sales log, deal jackets, copy of the sales invoice, Form CRT-61, Certificate of Resale, and any other pertinent documentation. (See also FY 2019-19).

ST-556-R

Form ST-556-R, Resale and Rolling Stock Fleet Exemption Schedule, is used for sales to a single customer of more than one motor vehicle, watercraft, aircraft, trailer, or manufactured (mobile) home and these sales are exempt as (1) sales for resale; or (2) sales for use as qualifying rolling stock.

Generally, a separate ST-556 form must be prepared and filed for each vehicle sold regardless of the taxability or nontaxability of the transaction. When multiple "sales for resale" to another dealer with the same delivery date are involved, more than one vehicle may be included on a single ST-556 by attaching Form ST-556-R. Sales reported on the ST-556 must be filed on a Gross Sales basis, and the dealer must complete the ST-556 and remit the tax to the Department no later than 20 days after the date of each delivery. For all sales reported on this schedule, the delivery date must be the same and the type of item listed must be the same kind (for example, all vehicles or all trailers, but not both).

Note: Form RUT-7, Rolling Stock Exemption for Motor Vehicles and Trailers (and Repair and Replacement Parts) Purchased on or after August 24, 2017, is used when claiming the rolling stock exemption on a single purchase.

ST-557

Form ST-557, Claim for Credit for Repossession of Motor Vehicles, is required to be filed when claiming a credit for repossessed motor vehicles, watercraft, aircraft, trailers, and manufactured (mobile) homes. The return has a semiannual deadline. Per the statute of limitations, for claims for credit filed with the Department between January 1 and June 30 of the current year, the taxpayer may file a credit for tax paid on the unpaid balance on vehicles repossessed during the current year and the previous 36 months (3 ½ years). Beginning July 1, the taxpayer may file a credit of tax paid on the unpaid balance on vehicles repossessed during the current year and the previous 30 months only (3 years).

In the case of tax paid on an account receivable that becomes a bad debt, the tax paid becomes a tax paid in error, for which a claim for credit may be filed in accordance with Section 6 of the Retailers' Occupation Tax Act, on the date that the Federal income tax return or amended return on which the receivable is written off is filed. Ordinarily, a deduction for uncollectible debts is allowed only for a retailer who uses the gross sales (accrual) method of accounting to keep its books and records and to file its federal income tax and sales and use tax returns. However, in the limited situation in which a cash basis retailer has prepaid the tax, such retailer is allowed to claim a bad debt deduction if the debt (i) has been found to be worthless or uncollectible and (ii) would be eligible to be both charged off in the retailer's books and records and claimed as a deduction under the IRS Code if the retailer had kept their accounts on an accrual basis.(See

Kishwaukee Auto Corral, Inc. v. The Dep't of Revenue, 2021 Ill. App. 200236, 457 Ill. Dec. 25, 194 N.E.3d 514 [Ill. App. Ct. 2021]) Likewise, retailers who use the gross sales method for their sales tax returns and cash basis for their income tax returns may also request a bad debt deduction.

Through July 30, 2015, retailers of tangible personal property other than motor vehicles, watercraft, trailers, and aircraft that must be registered with an agency of this State may obtain this bad debt credit by taking a deduction on the returns they file with the Department for the month in which the federal income tax return or amended return on which the receivable is written off is filed, or by filing a claim for credit. 86 Ill. Adm. Code 130.1960(d)(2)(B).

Beginning July 31, 2015, a retailer is relieved from liability for any tax that becomes due and payable if the tax is represented by amounts that are found to be worthless or uncollectible, have been charged off as bad debt on the retailer's books and records in accordance with generally accepted accounting principles, and have been claimed as a deduction pursuant to section 166 of the Internal Revenue Code on the income tax return filed by the retailer. A retailer that has previously paid such a tax may, under rules and regulations adopted by the Department, take as a deduction the amount charged off by the retailer. If these accounts are thereafter, in whole or in part, collected by the retailer, the amount collected shall be included in the first return filed after the collection, and the tax shall be paid with the return. [35 ILCS 120/6d(a)]. For purposes of computing the deduction or refund, payments on the accounts or receivables shall be prorated against the amounts outstanding on the accounts or receivables (e.g., any penalties, interest and fees). 86 Ill. Adm. Code 130.1960(d)(3)(A).

Because retailers of motor vehicles, watercraft, trailers and aircraft do not pay Retailers' Occupation Tax to the Department on retail sales of motor vehicles, watercraft, trailers, and aircraft with monthly returns, but remit the tax to the Department on a transaction-by-transaction basis, they are unable to take a deduction on the returns that they file with the Department, but may file a claim for credit with the Department on any transaction with respect to which they desire to receive the benefit of the repossession credit. 86 Ill. Adm. Code 130.1960(d)(3)(B).

ST-588

Form ST-588 Nonresidency Exemption Certification for Sales and Leases of Motor Vehicles and Trailers, is obtained from the purchaser. As a condition of claiming the nonresident purchaser exemption, the nonresident purchasers must certify they are not residents of Illinois. This certification must be retained in the seller's records. In addition, the seller must retain in its records evidence to support the purchaser's claim of non-residency. When the purchaser is an individual, the best evidence to support the purchaser's claim of nonresidency is a copy of the purchaser's out-of-state driver's license. When the purchaser is not an individual, retain a copy of the out-of-state driver's license of the person making the purchase on behalf of the actual purchaser. In both instances, retain the number of the drive-away permit issued or the out-of-state license plate transferred to the motor vehicle or trailer.

12.3.4 Use Tax Transaction Returns

For an overall chart of Vehicle Use Tax Transaction Return taxability, see RUT-76, Transaction Return Chart.

RUT-25

Form RUT-25, Vehicle Use Tax Transaction Return, is required when a motor vehicle, motorcycle, ATV, manufactured (mobile) home, watercraft, snowmobile, a trailer, or aircraft is purchased from an unregistered, out-of-state retailer (e.g., dealer, lending institution, leasing company selling at retail) and will be titled or registered in Illinois. The tax return is filed by the purchaser and is due within 30 days after the date the item is brought into Illinois. The tax rate is determined by the address where the motor vehicle will be titled. The purchaser should attach a copy of the bill of sale as proof of the purchase price.

RUT-25-LSE

Form RUT-25-LSE, Use Tax Return for Lease Transactions, must be filed by the purchaser when titling or registering a motor vehicle, watercraft, aircraft, trailer, manufactured (mobile) home, snowmobile, or all-terrain vehicle (ATV) in Illinois that is leased through an unregistered, out-of-state dealer or retailer. The alternate selling price and actual selling price rules also apply when reporting on form RUT-25-LSE. (FY 2015-03)

RUT-25-E

Form RUT-25-E, Fleet Exemption Schedule, is used alongside with RUT-25 or RUT-25-LSE to report multiple purchases of qualifying rolling stock from a single out-of-state retailer. The rolling stock must be the same kind of item (e.g., all vehicles or all trailers) and have the same purchase date and date brought into Illinois. If the purchases the taxpayer is reporting do not meet these criteria, each purchase must be reported on a separate Form RUT-25 or Form RUT-25-LSE.

RUT-50 Vehicle Use Tax Transaction Return

Form RUT-50, Private Party Vehicle Use Tax Transaction, is required to be filed by the purchaser when a motor vehicle is purchased or acquired by gift or transfer from a private party (whether in Illinois or out of state). The tax is determined by the purchase price (or fair market value) of the motor vehicle. If the purchase price is less than $15,000 then the tax due is based on the age of the vehicle. 86 Ill. Adm. Code 151.105. Form RUT-50 is due 30 days from the date the item was purchased or acquired or the date the item was brought into Illinois, whichever is later.

The Vehicle Use Tax is a privilege tax imposed on the privilege of using, in this State, motor vehicles of the First and Second Divisions, motorcycles, motor driven cycles, and motorized pedalcycles. 86 Ill. Adm. Code 151.101(a). Trailers, snowmobiles, and manufactured (mobile) homes are not subject to Vehicle Use Tax and are not required to be reported on Form RUT-50. Motor vehicles that must be reported on Form RUT-50 include cars, trucks, vans, motorcycles, motor homes, ATVs, and buses.

Beginning July 1, 2015, the municipal tax for the City of Chicago and the county tax for Cook County are reported on and remitted with RUT-50 forms if the purchaser's address, as it appears on the Illinois title or registration application, is within the jurisdiction of the City of Chicago or Cook County. See RUT-6, Form RUT-50 Reference Guide for additional detail. (FY 2015-13).

RUT-75 Aircraft/Watercraft Use Tax Transaction Return

Form RUT-75, Aircraft/Watercraft Use Tax Transaction, is required when an aircraft or watercraft is acquired by gift, donation, transfer, or non-retail purchase. "Non-retail purchase" means the purchase from a person or entity that is not in the business of selling aircraft or watercraft at retail. No trade-in credit is allowed in a non-retail purchase transaction. 86 Ill. Adm. Code 153.105.

Form RUT-75 must be filed by a person or business who:

- acquired an aircraft or watercraft by gift, donation, transfer, or non-retail purchase from a private party for use in Illinois; or
- moved into Illinois with an aircraft or watercraft they own that was originally acquired by gift, donation, transfer, or non-retail purchase from a private party for use in Illinois.

Form RUT-75 is required to be filed no later than 30 days from the date of purchase or the date the aircraft/watercraft is brought into Illinois, whichever is later.

ST-70, Aviation Fuel Sales and Use Tax Return

For purposes of Form ST-70, Aviation Fuel Sales and Use Tax Return, "aviation fuel" means jet fuel and aviation gasoline. Effective December 1, 2017, retailers who sell aviation fuel are required to file Form ST-70 to report and pay sales tax on aviation fuel. This is not a new tax. It is a new way to report and pay the existing sales tax on aviation fuel previously reported on the ST-1. (FY 2018-13-A)

ART-1, Automobile Renting Occupation and Use Tax Return

The Automobile Renting Occupation and Use Tax Act imposes a tax upon persons engaged in the business of renting automobiles in Illinois under lease terms of one year or less. 86 Ill. Adm. Code 180.101. The rentor is responsible to collect and remit Automobile Renting Occupation and Use Tax (ART). If the use tax is not paid to the rentor, the person using the automobile in Illinois must pay the tax directly to the Department. 86 Ill. Adm. Code 190.150

Qualifying motor vehicles include:

- a first division motor vehicle;
- a second division, self-contained motor vehicle designed for or permanently converted to provide living quarters for recreational, camping, or travel use, provided this motor vehicle has direct walk-through access to the living quarters from the driver's seat;
- a second division van designed for the transportation of not less than 7 or more than 16 passengers; or
- a second division motor vehicle with a gross vehicle weight rating of 8,000 pounds or less.

For purposes of the ART-1, exempt organization includes:

1) government;
2) any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes; and
3) any not-for-profit corporation, society, association, foundation, institution, or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older.

This list includes automobiles, pickup trucks, sport utility vehicles, motorcycles and motor-driven cycles, motor homes and recreational vehicles, and vans. In addition, if the taxpayer is an out-of-State business that rents to Illinois persons, corporations, firms, or associations, they are required to file the ART-1 and pay Automobile Renting Use Tax on the receipts the taxpayer has collected.

The taxpayer also should file this form if they are renting or leasing from an out-of-State location a qualified motor vehicle to be titled and registered in this state and do so in a county or municipality that imposes a County or Municipal Renting Occupation and Use Tax. (See Publication 114, Automobile Renting Occupation and Use Tax, for additional information).

In addition, an out-of-State business that rents to Illinois persons, corporations, firms, or associations is required to file and pay Automobile Renting Use Tax on the receipts that have been collected. Every rentor maintaining a place of business in this State must act as an Automobile Renting Use Tax collector for this State when that rentor makes delivery of the rental automobile to the rentee in Illinois even though that rentor does not incur any Automobile Renting Occupation Tax liability as a result of the transaction. 86 Ill. Adm. Code 190.160

For example:

1) Out-of-State rentors having Illinois rental outlets that are subject to the Automobile Renting Occupation and Use Tax Act are required to collect and remit Automobile Renting Use Tax, as such, when shipping or delivering rental automobiles to rentees in Illinois, from outside Illinois in transactions that have no connection with the Illinois rental outlets. This is true even though the interstate delivery would not subject the out-of-State rentor to Automobile Renting Occupation Tax.

2) Out-of-State rentors having any kind of business in Illinois or any kind of representative or agent either stationed in Illinois or coming into Illinois from time to time must collect and remit Automobile Renting Use Tax, as such, when shipping or delivering the automobile to the rentee in Illinois. This is true even though the rentor would not incur Automobile Renting Occupation Tax liability on the transaction because the Illinois agent has no authority to accept orders so as to create Illinois rental contracts but is authorized only to solicit orders in Illinois for acceptance by the rentor outside Illinois and because the automobile is not located in Illinois at the time it is rented.

There are several electronic data processing systems utilized in preparing books and records for new vehicle dealers. Standardized ("canned") computer programs are used to produce monthly printed journals, ledgers, and reports. The auditor will study and evaluate the system to determine the tax information is accurately reflected.

Vehicle Sales Journals – Depending on the dealers accounting software, these may be called schedules or transaction reports. The most common journals are for new car sales, used car sales, wholesale car sales, and dealer trade. Depending on the accounting software and whether the dealer uses the journals, the auditor could also have journals for new truck sales, used truck sales, and leased vehicles. This information could be in the deal jacket as well. These figures can be traced directly into the general ledger.

Detail General Ledger – This may be necessary to trace the payoff amount for the traded-in vehicle back to the owner of the trade-in vs. lienholder. Money going back to the owner of the trade-in needs to be deducted from the trade-in amount for ST-556 purposes.

Police Book – This is a Secretary of State requirement used to record the purchase of a vehicle and the sale of that vehicle. Most police books are kept electronically now.

Drive-away (DA) Permits – The dealer should have an account with the Illinois Secretary of State to issue these permits as most permits are requested and issued electronically. The dealer can access their account and provide a report for all DA permits issued during the audit period. Per 625 ILCS 5/3-605.

Manufacturer Incentive Statements – All new car dealers will have a statement of all monies paid to them for selling a car or to help sell a car. The statement may have a different name depending on the vehicle manufacturer involved in the audit. (86 Ill. Adm. Code 130.2125).

Depreciation Schedules – While review of fixed assets is normally thought of as part of the ST 1 audit, the taxpayer can depreciate motor vehicles that are listed as fixed assets. Since any Use Tax due on the assets should have been reported on a ST-556, RUT 25, or RUT 50 return, a review of the depreciation schedule should be completed.

Financial Statements - Financial statements are generally two primary reports: the balance sheet and the income statement. These records will assist the auditor with verifying the dealer's records. Additionally, the auditor may use the cash flow statement and statement of shareholders' equity since they may also be useful for gaining control and explaining some other unverified account amounts.

12.5.1 Overview

In general, an audit of a motor vehicle dealer, aircraft dealer, watercraft dealer, or any other vehicle dealer follows the same pattern as an audit of any other retailer. A new vehicle dealer's operations are normally departmentalized with records for each department. Therefore, it may be advantageous to organize the audit in corresponding segments.

Audits of vehicle retailers will consist of the following aspects:

- Vehicle Sales – new and used vehicles
- Sales of Service
- Parts Counter Sales
- Fixed Assets purchases
- Consumable Supply purchases
- Leasing (if necessary)

12.5.2 Reconciliation of Sales (Schedule 3)

Vehicle dealers report sales on a sales basis (i.e., transactional basis) because of the requirement to report vehicle sales on individual returns. The specific source of the gross receipts/sales amount used as the books and records figure is required to be referenced on a transactional Schedule 3. Since ST-556-LSE returns report gross receipts on the cash down and monthly lease payments, a formal Schedule 3 comparing books and records to the ST-556 transcripts will not work for the 556-LSE. This approach will uncover non-taxed gross charges such as accessories, manufacturer monies, doc fees, or electronic filing fees. (86 Ill. Adm. Code 130.2015).

12.5.3 Sales Tax Accrual Account (Schedule 5)

Taxes are generally accrued via the individual sales journals (i.e., vehicle sales, parts counter, service, body shop) and are, therefore, relatively easy to verify by department. Auditors should analyze the tax accrual accounts as it may disclose leads to unreported sales or the under-collection /over-collection and under-reporting of taxes. Areas such as sublet, goodwill repairs, wholesale parts, and extended warranties could be taxed by the dealer but not remitted.

For example, the taxpayers' service parts and accessories for warranty may be taken as a deduction on the sales tax return. However, this warranty account may be used for ALL warranties billed by the taxpayer. This will include extended warranties and goodwill repairs. Another example is the taxpayer taking the entire wholesale parts account as a resale deduction on the sales tax return. This is usually incorrect because the taxpayer has taxable accounts set up as wholesale accounts. Taxes shown as collected in these accounts may not have been remitted.

12.5.4 Dealer Records

Typically, the types of records an auditor should request during a 556/556-LSE audit are:

1. Financial statements
2. Federal Income Tax Returns

3. Chart of Accounts
4. Vehicle sales journals (new, used, wholesale, and dealer trades are the typical journals kept but may have more or less types unique to the dealer)
5. Deal Jackets for the vehicle sales transactions for the audit period or sample period
6. Finance & Insurance (F&I) Sales Report – usually the taxpayer could generate the report as Microsoft excel files and it has both vehicle stock numbers and VINS. The report could be used to look up the VIN. It's a Finance and Insurance Department report.
7. Manufacturer's Incentive Statements

Dealers generally provide these documents either in paper or .pdf form. Ideally, it's preferred to receive this information in Excel form so that it is easier to search for specific keywords within the document. The dealer records need to be examined to verify the accuracy of the ST-556 or ST-556 LSE return under review. The documents within the deal jackets, as well as with the information in GenTax should be compared and any discrepancies should be noted. Some important areas to review are dates, total price, trade-ins, exemptions, and tax due.

Vehicle Sales Journals

New Vehicle Sales – The standard journals prescribed by the manufacturers are usually self-explanatory and follow a prescribed chart of accounts. Auditors will use the amounts shown in the sales journal for books and records amounts for the test transactions. The auditor should give particular attention to postings to the general ledger columns, credit postings to expense accounts for a portion of the new vehicle selling price, and debit entries to sales accounts.

Used Vehicle Sales – Postings are based on used vehicle invoices. Again, aside from general composition of the journal, particular attention should be paid to general ledger column postings and debits to sales accounts. In addition, auditors should be alert for discount accounts and combination of both resale and retail sales in records of repossessions.

Vehicle Sales Invoices

The extent of examinations of vehicle transactions is determined by the volume of sales, number of invoices, and indications of discrepancies from sales tax working papers, sales tax accrual accounts, or other sources. Examination of the dealer prepared sales invoices should be made for content, and comparison of content with posting data. The numeric sequencing should be noted and compared with the sequence in sales journals. Particular attention should be paid to voided invoices and the use of invoices as credit memos and attention should be given to the comparison of VEHICLE ORDERS and DEALER PREPARED SALES INVOICES, especially when the dealership does not furnish a copy of the invoice to the customer.

The auditor will make decisions on what is the best sampling approach and what ST-556s and customer deal jackets will be included in the sample. A detail sample might be decided on to look at all of the non-taxed transactions and the taxed sales might be projected by percentage of error or the volume of invoices may require a Revenue Computer Assisted Auditor audit be done.

The auditor will verify that the supporting documentation for exemptions claimed is available and appropriate. The auditor will compare the figures on the purchase agreement to the figures on the ST-556. Specifically:

- Confirm document fees are included in the selling price.
- Confirm dealer add-ons are included in the selling price.
- Confirm accessories are included in the selling price. Note: A purchase sheet may show the cost of the accessories with tax added and then the whole amount including tax is included in the selling price. This is an over-collection of taxes. Also, the accessories shown on the purchase sheet may not have been included in the selling price on the ST-556.
- Confirm rebates are included in the selling price. Check to see if the dealer deducted the rebate amount from the selling price before entering the selling price on the ST-556. Rebates are to be included in the selling price if the rebate is deal specific and should be used to reduce the amount the buyer will pay after taxes are added in. If the rebate is like a discount and the dealer will not be reimbursed from the manufacturer, the rebate would not be included in the selling price.
- Confirm down payments are included in the selling price. Check to see if the dealer deducted the down payment before entering the selling price on the ST-556. Down payments are to be included in the selling price and should be used to reduce the amount the buyer will pay after taxes are added in.
- Confirm freight-in and prep fees are included in the selling price.
- Confirm the trade-in credit is not counted twice. The dealer will deduct the trade-in value on the purchase sheet and then list the net price as the selling price on the ST-556 and then deduct the trade-in again on the ST-556. This results in unjust enrichment for the dealer.
- Confirm the trade-in is a qualified trade-in and third-party trade-ins are properly documented. A common problem is the sale of a vehicle to a leasing company and the trade-in is owned by a different leasing company. In this situation, the trade-in can be disallowed.
- Confirm the dealer does not collect Retailers' Occupation Tax from the lessor or purchaser on the selling price before deducting regular or advance trade-in credits. On the ST-556, the tax is paid on the selling price less the trade-in credit. 86 Ill. Adm. Code 130.455. If the dealer keeps the difference, then it would be considered unjust enrichment.
- Generally, federal excise taxes must be included in the total price and are subject to tax. Exceptions are the federal excise taxes on trucks weighing 33,000 pounds or more; or trailers or semitrailer chassis weighing 26,000 pounds or more. The federal excise taxes on the items above are not subject to Illinois Sales or Use Tax and, therefore, should not be included in the total price in Section 6, Line 1, of Form ST-556.

Police Books

Dealer Police Books are a Secretary of State requirement and are used to record the purchase of a vehicle and the sale of the same vehicle. Most police books are kept electronically now. Details of the log should include the specific vehicle identification number, (VIN/serial number), year and make of the vehicle, name and address of person(s) providing the vehicle, the date acquired, and the dealer's stock number assignment. This information is expanded at disposition of the vehicle to include the

name and address of the buyer and date sold. Purchase prices and selling prices may or may not be reflected.

Any vehicles claimed as trade-ins in the vehicle sales examination, should be traced back to the Police Book. Furthermore, any vehicles on hand (generally excluding new vehicle inventory) should be traced to the Police Book and all appropriate titles on such vehicles should be reviewed. Names shown as title holders per the title should be reflected consistently in the Police Book. Any discrepancies must be explained. Also, any vehicles claimed as trade-ins on ST-556's should show consistency in names of purchasers on the ST-556's and names of former owners in the Police Book. All titles of vehicles on hand for sale should be in the name of the dealer or assigned to the dealer and endorsed by the named title holder.

Although many used vehicle dealers may employ a double entry accounting system and exert excellent control of purchases, inventories, and expenses; most use a single-entry accounting system with varying degrees of control. Dealers selling late model used vehicles can have flooring loans on purchases and sell on conditional sales contracts with recourse. "Floor Plan Financing" is a line of credit that allows dealers to borrow against their inventory and repay the debt as they sell their inventory or borrow against the line of credit again to add new inventory. Audits of used vehicle dealers should be done in the same way as new vehicle dealers to the extent their operations warrant it.

Customer Folders ("Deal Jackets")

The customer's folder ("Deal Jackets") usually includes a copy of the vehicle invoice, customer's (vehicle) purchase order, conditional sales contract, and other memoranda such as drive-away permit information. A deal jacket will hold all paper documents related to the customer purchasing that vehicle from initial contact information to the close of the sale plus information received after the sale. Deal jackets can have over 100 pages of information of which the auditor may only be interested in five or so pages depending on if they are verifying an exemption or gross receipts and trade in. Privacy concerns are not a valid reason not to provide the entire deal jacket. The auditor should compare documents in the folder for agreement as to selling price, sales tax reimbursement, discount, and agreed trade-in valuation, if applicable, and all receipts realized.

Automobile Manufacturers Statements

Dealer Payment Statements - Automobile manufacturers issue "Dealer Payment Statements" to their affiliated dealerships. This is one way to trace unreported ST-556 receipts when the manufacturer supplements the sale of a vehicle. The auditor should request and review these statements to determine if the above situation exists or if there is any other area where the taxpayer may not be in compliance.

Manufacturer Incentive Statements – Gross Receipts means all the consideration actually received by the seller, except traded-in tangible personal property (86 Ill. Adm. Code 130.401). The source of the consideration received by a retailer is immaterial in determining the gross receipts subject to tax. *Ogden Chrysler Plymouth, Inc. v. Bower*, 348 Ill. App. 3d 944 (2d Dist. 2004). The *Ogden* case dealt with money received from the manufacturer for an employee discount plan. Money received from the

manufacturer to reimburse the dealer for selling a vehicle at a discounted price to an eligible purchaser is included in gross receipts. (See also 86 Ill. Adm. Code 130.2125(f)).

Internet Sales of Vehicles

Vehicle dealers list vehicles for sale on various internet sites such as E-bay and CarTrader.com. Customers will bid on or make an offer to the person listing the vehicle for sale. If the person who listed the vehicle accepts the bid or offer, the purchaser has to send payment or make arrangements for payment before the deal is consummated. Provisions for delivery of the vehicle are usually the responsibility of the purchaser. The following are issues to look for in an audit:

- Is the purchaser a resident of Illinois? If the purchaser is an Illinois resident, verify the appropriate amount of tax was charged and collected.
- Is the purchaser an out-of-State resident? If so, the following must be addressed;
  - Where and how does delivery take place?
  - Is the vehicle taxable if picked up in Illinois?
    - If the ST-556 shows the vehicle was delivered out of state, the dealer must have verification the vehicle was shipped out of state, such as a bill of lading if the dealer shipped it to the buyer or a copy of the shipping document if the buyer arranged for the shipping. 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.
    - If the vehicle is picked up from the dealer in Illinois, the following must be verified:
      - Was tax collected on those vehicles which are not registered for highway use? Sales of watercraft, all-terrain vehicles (ATVs), off road motorcycles or other off road vehicles, motor driven cycles, and snowmobiles must have tax collected on them. There are no reciprocal exemptions for non-taxation with other states on the sales of these vehicles.
      - If the motor vehicle is required to be registered with the Illinois Secretary of State's Office for highway use, verification is needed on whether the buyer meets the out-of-State buyer's exemption. If the sale is to a buyer from a non-reciprocating state, was the appropriate rate of tax charged and collected?

Effective February 1, 2022, sales of tangible personal property that is required to be titled or registered with an agency of the State of Illinois, including motor vehicles, watercraft, aircraft, and trailers, that are made by a remote retailer or over a marketplace to purchasers in Illinois are sourced the same as all other sales made by a remote retailer or over a marketplace to purchasers in Illinois. See 86 Ill. Adm. Code 131.110(e) and 131.130(c).

For sales made by a remote retailer or by a marketplace facilitator on behalf of marketplace sellers, taxes apply at the location in Illinois to which the titled or registered item is shipped or delivered, or the location in Illinois where the purchaser takes possession of the titled or registered item. 86 Ill. Adm. Code 131.110 and 131.130.

Marketplace facilitators that meet either of threshold amounts (cumulative gross receipts of $100,000 or 200 or more separate transactions) and that make their own sales over their marketplace, incur State and local retailers' occupation tax at the rate in effect at either the location of the inventory or the location in Illinois at which the selling activities otherwise occur (as determined by applying the provisions of 86 Ill. Adm. Code 270.115(c) and (d)). 86 Ill. Adm. Code 131.130(g).

For sales made by marketplace facilitators of their own items that are not fulfilled from inventory in Illinois and for which selling is not engaged in at any location in Illinois, taxes apply at the location in Illinois to which the titled or registered item is shipped or delivered or the location in Illinois where the purchaser takes possession of the titled or registered item. 86 Ill. Adm. Code 131.130(g).

Parts Counter Sales – General

Sales of parts over the counter are subject to Retailers' Occupation Tax when sold to end-users (e.g., ABC Ford selling to John Smith who is repairing his own car). Other servicemen, dealers, or individuals who purchase over-the-counter parts from a dealer may or may not pay tax on the purchase. The purchaser may present a Resale Certificate (CRT-61), a RUT-7 for rolling stock, or an exempt organization certificate which would make the sale non-taxable.

A vehicle dealer should have sales of parts identified and separately accounted for. Parts sold as part of the service on an automobile (including goodwill and warranty work) should not be included with actual retail sales. Additionally, accessories are subject to Retailers' Occupation Tax whether sold over-the-counter or in conjunction with service. 86 Ill. Adm. Code 130.2015.

Some vehicle dealers may have a retail section where various items such as souvenirs, shirts, helmets, snacks, camping supplies, marine supplies, and paper goods may be sold in addition to parts. The auditor will review the selected sample invoices for correctness of tax charged and valid deductions. The invoices have to be tracked back to the controlling document (Sales Journal, General Ledger account, etc.).

Occasionally, dealers will prepare counter tickets charging parts to various departments ("Internal Sales"). These parts are generally used to make a car more readily available for sale and such parts are exempt. The auditor must determine whether the parts were consumed by the dealership or actually sold and what, if any, tax is applicable. For example, parts used to repair company vehicles would be subject to use tax.

12.5.5 Trade-Ins

Qualified Trade-Ins - A qualified trade-in is an item (1) that a dealer accepts to reduce the selling price (in part or in full) of the item sold; (2) that the dealer is in the business of selling; and (3) that, if sold at retail in Illinois, would be required to be reported on Form ST-556. A person or business is "in the business of selling" a particular kind of item if they hold themselves out to the public as being engaged in (or habitually engage in) selling such items. For example, if the taxpayer is in the business of selling both automobiles and motorcycles, they may claim a motorcycle as a trade-in on the sale of an automobile. However, if they are in the business of selling only automobiles, they may

not claim a watercraft as a trade-in on the sale of an automobile. (ST-9 A Guide for Reporting Sales Using Form ST-556, Sales Tax Transaction Return)

The phrase "like kind and character" includes, but is not limited to, the trading of any kind of motor vehicle on the purchase of any kind of motor vehicle, or the trading of any kind of farm implement on the purchase of any kind of farm implement, while not including a kind of item which, if sold at retail by that retailer, would be exempt from Retailers' Occupation Tax and Use Tax as an isolated or occasional sale. 86 Ill. Adm. Code 130.425(b).

A dealer may reduce its gross receipts by the value of or credit given for a traded-in motor vehicle when:

1. An individual trades a motor vehicle they own on the purchase of a new or used motor vehicle;
2. A lessor trades a motor vehicle they own on the purchase of a new or used motor vehicle for subsequent lease;
3. A lessor other purchaser trades a motor vehicle owned by a prospective lessee or a third party when 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
4. A motor vehicle is traded-in as described in (2) or (3), and the dealer executes the lease but assigns the lease to a purchasing lessor, if the following requirements are part of the transaction:
    a. the lease agreement states that the lease and vehicle will be assigned to the lessor making the trade of the motor vehicle; and
    b. 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. Adm. Code 130.455(c)(1).

Beginning January 1, 2020, through December 31, 2021, Public Act (P.A.) 101-0031 amended the Retailers' Occupation Tax Act and the Use Tax Act to redefine the "selling price" when a customer trades in a first division motor vehicle. Under this new definition, "selling price" includes the value of or credit given for traded-in first division motor vehicles exceeding $10,000.

P.A. 101-0031 only places a $10,000 limit on traded-in first division motor vehicles. If the taxpayer is licensed to sell both first and second division motor vehicles and accepts a second division motor vehicle as a trade in, they can claim the full value of the traded-in second division motor vehicle as a credit for purposes of calculating the tax due, but this credit may not reduce the tax below zero.

Effective **January 1, 2022**, Public Act (P.A.) 102-0353 amended the Retailers' Occupation Tax Act and the Use Tax Act to remove the $10,000 trade-in credit limit for sales and purchases of first division motor vehicles that was previously created by P.A. 101-0031. This means, for sales and purchases made on or after January 1, 2022, the credit on the return for the trade-in of a first division motor vehicle can reflect the full value of or credit given, for the trade-in.

Multiple Trade-In Credits – A dealer may use the cumulative trade-in credits from the traded-in vehicles to reduce gross receipts from the sale of the newly purchased vehicle so long as the trade-ins and sale are recorded as a single transaction. 86 Ill. Adm. Code 130.455(f).

Split Trade-In Credits – A dealer may split the amount of the trade-in credit from the traded-in vehicle and apply it toward the purchase price of one or more new vehicles so long as the trade-in and purchases are recorded as a single transaction. The amount of trade-in credit to be applied to each new vehicle will be determined by the dealer and purchaser.

Combined Trade-In Credits - A multiple trade-in transaction or split trade-in transaction may only be used in conjunction with an advance trade-in transaction if the transfer of all vehicles involved in the trade are recorded as a single transaction and the purchaser is contractually obligated to purchase a vehicle from the dealer within the specified period of time.

From January 1, 2020, through December 31, 2021 – Trade-in credits were limited not to exceed $10,000.

Non-Qualified Trade-Ins - A trade-in is not qualified if the dealer is not in the business of selling the item offered in trade; the item, if sold at retail in Illinois, would not be required to be reported on Form ST-556; the dealer is the owner of the item traded in; the item traded in was used in a sales transaction that occurred before the trade was offered but was not identified by written contract as an advance trade-in; or the owner (third party) offering an item as a trade-in on behalf of a buyer is in the business of selling such items at retail.

A dealer may not reduce its gross receipts by the value of or credit given for a traded-in motor vehicle where:

1. The dealer is the owner (holds title or certificate of origin) of the traded-in motor vehicle;
2. 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 advance trade-in vehicle as required below in “Advance Trade-ins”; or
3. The party holding title and offering the vehicle or vehicles for trade on behalf of another purchaser or lessor would not be entitled to the isolated or occasional sale exemption if the vehicle or vehicles were sold by that party, rather than traded.

86 Ill. Adm. Code 130.455(c)(2).

The dealer may choose to accept any item as a trade-in, even one that is not considered a qualified trade-in, to reduce the buyer’s cost of the item sold. However, the dealer may not use the value of or credit given for a non-qualifying trade-in to reduce the amount subject to tax.

Deferred Trade-Ins No trade-in credit may be used in a transaction where the sales or use tax return does not reflect that a trade was offered **at the time of the sales transaction (emphasis added)**.

The appropriate sales or use tax return cannot be amended to reflect the value of or credit given [35 ILCS 120/1] for a vehicle offered for trade subsequent to the completion of the sales transaction. 86 Ill. Adm. Code 130.455(e).

Advance Trade-Ins - A transaction may constitute an advance trade-in if, 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. Advance trade credits not used within the time specified expire and may not be used subsequent to the 9-month credit period. Advance trade credits are non-transferable. 86 Ill. Adm. Code 130.455(d).

The documents regarding an advance trade-in must state that the purchaser has a contractual obligation to purchase a vehicle within the specified amount of time. The contract need not specify the make, model, or purchase price of the vehicle to be purchased.

The amount of the advance trade-in credit given by the dealer may be in the form of dealer credit or cash. In completing the transaction, the purchaser may pay the dealer cash or other consideration for the purchase price of the vehicle(s) purchased.

The advance trade-in 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 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. Adm. Code 130.455(d).

Generally, advance trade-ins 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. The only exception occurs when

1. the seller of the motor vehicle at the time of the auction is a disclosed principal as described in 86 Ill. Adm. Code 130.1915(b);
2. 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 after the date of the auction sale; and
3. 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 purchases of another vehicle as long as all other requirements of Section 130.455(d) have been met.

> **EXAMPLE:** Automobile-leasing company L owns an automobile that it leases to a lessee for a period of two years. At the end of the two-year lease, the lessee declines to purchase

the vehicle and returns it to automobile leasing company L. Automobile-leasing company L decides to sell the automobile at auction. Automobile-leasing company L is disclosed as the principal at the auction under the requirements of subsection (b) of Section 130.1915. Automobile-leasing company L provides to the auctioneer a written offer that would bind the automobile-leasing company L to purchase a different automobile from the winning bidder. The offer for sale of the vehicle at auction includes the offer to bind automobile-leasing company L to purchase a different automobile from the winning bidder within 9 months of the auction. Automobile dealership D is the winning bidder for the automobile. If, at the time of the completion of the auction sale, automobile dealership D accepts the offer of automobile-leasing company L and automobile-leasing company L becomes contractually bound to purchase a vehicle from automobile dealership D within 9 months after the auction sale and otherwise meets all of the requirements of Section 130.455(d), then the auction sale of the automobile-to-automobile dealership D will qualify as an advance trade-in.

Regardless of the amount of advance trade-in credit issued to a customer for a first division motor vehicle prior to January 1, 2020, for sales or purchases of motor vehicles **on or after January 1, 2020, through December 31, 2021,** the total credit claimed for that trade in cannot exceed $10,000. For purposes of determining whether the sale is made **on or after January 1, 2020**, the date of sale is the date the motor vehicle is delivered to the purchaser. For sales and purchases made **on or after January 1, 2022**, the credit on the return for the trade-in of a first division motor vehicle can reflect the full value of or credit given, for the trade-in.

Valuation of Traded-In Vehicles - Prior to January 1, 2020, the selling price of a vehicle does not include *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. *The value of* a traded-in vehicle is the amount of value assigned to the vehicle without regard for outstanding debt owed on the traded-in vehicle by any party. 86 Ill. Adm. Code 130.455(b)(1).

The amount of *credit given* for a traded-in vehicle is the value assigned to the vehicle, reduced by any cash payments received by the purchaser or title holder of the traded-in vehicle. The reduction of the value by offsetting cash payments results in the actual *credit given* for the traded-in vehicle. Where cash payment is made to the purchaser or the title holder of the traded-in vehicle, the trade-in credit is equal to the actual *credit* given for the vehicle. 86 Ill. Adm. Code 130.455(b)(2).

Example:

	Value of Trade-in	Credit Given	Trade-in Credit
Traded-In Vehicle	$20,000	$20,000	$10,000
With $3,000 Lien	$20,000	$20,000	$10,000

With $2,000 Cash Back to Purchaser	$20,000	$18,000	$10,000

<u>Trade-in Credit Changes</u> - January 1, 2020, through December 31, 2021

Beginning January 1, 2020, and until December 31, 2021, trade-in credit may not be taken for the portion of the value of or credit given for a traded-in first division motor vehicle of like kind and character as that being sold that exceeds $10,000. What this means for motor vehicle dealers is that $10,000 is the maximum credit the retailer may take on the applicable return (Form ST-556, Sales Tax Transaction Return, or Form ST-556-LSE, Transaction Return for Leases) to reduce the taxable selling price of a motor vehicle when that retailer accepts the trade in of a first division motor vehicle in the transaction, regardless of the value of or credit given for the trade in. This does not prohibit the retailer from reducing the price of the vehicle being sold by the value of or credit given for the traded-in motor vehicle. It only limits the credit the retailer may take on the return for that trade-in.

This trade-in credit limit also applied to taxpayers reporting Use Tax on motor vehicle purchases reported on Form RUT-25, Vehicle Use Tax Transaction Return, or Form RUT-25-LSE, Use Tax Return for Lease Transactions. These taxpayers could only claim a maximum trade-in credit of $10,000 to reduce the taxable purchase price of a motor vehicle when that taxpayer had traded in a first division motor vehicle in the transaction, regardless of the value of or credit received for the trade in.

> **Note:** Trade-in credit is not allowed on many transactions reported on Forms ST-556-LSE and RUT-25-LSE. Before the taxpayer can claim a trade-in credit on Form ST-556-LSE or Form RUT-25-LSE, they must be certain that they are allowed to claim this trade-in credit. The taxpayer should review the applicable instructions for the return they are filing to determine when a trade-in credit is allowed.

The following examples illustrate the trade-in credit allowed in various transactions from January 1, 2020, through December 31, 2021:

> **Example 1**
> A motor vehicle retailer sells a new car for $40,000 and allows $30,000 for the trade-in of a sport utility vehicle that seats eight passengers. Since a sport utility vehicle that seats eight passengers is a first division motor vehicle, the credit the retailer may take on the return for the traded-in sport utility vehicle is $10,000. The selling price used to calculate the tax due is $30,000 (e.g.., $40,000 – $10,000).

> **Example 2**
> A motor vehicle retailer sells a new car for $40,000 and allows $30,000 for the trade-in of a pickup truck. Since a pickup truck is a second division motor vehicle, the credit the retailer may take on the return for the traded in pickup truck is $30,000. The selling price used to calculate the tax due is $10,000 (e.g., $40,000 – $30,000).

Example 3
A motor vehicle retailer sells a new motorcycle for $30,000 and allows $20,000 for the trade-in of a motorcycle. Since a motorcycle is a first division motor vehicle, the credit the retailer may take on the return for the traded-in motorcycle is $10,000. The selling price used to calculate the tax due is $20,000 (e.g.., $30,000 – $10,000).

Example 4
A motor vehicle retailer sells a new limousine for $60,000 and allows $30,000 for the trade-in of a limousine that seats 10 passengers. Since a limousine that seats 10 passengers or less is a first division motor vehicle, the credit the retailer may take on the return for the traded-in limousine is $10,000. The selling price used to calculate the tax due is $50,000 (e.g., $60,000 – $10,000).

Example 5
A motor vehicle retailer sells a new limousine for $60,000 and allows $30,000 for the trade-in of a limousine that seats 11 passengers. Since a limousine that seats 11 passengers or more is a second division motor vehicle, the credit the retailer may take on the return for the traded-in limousine is $30,000. The selling price used to calculate the tax due is $30,000 (e.g.., $60,000 – $30,000).

The taxpayer may still combine credit from multiple first division motor vehicles being traded in for a single transaction, as long as the trade-in credit reported for the transaction on Form ST-556 or ST-556-LSE does not exceed $10,000 per first division motor vehicle.

Example: A motor vehicle retailer sells a new car for $60,000 and allows $50,000 for the trade in of 2 vehicles on the transaction: $30,000 for the trade in of one first division motor vehicle and $20,000 for the trade in of a second first division motor vehicle. The credit that the retailer may take on the return for the traded-in first division motor vehicles is $20,000 (e.g., $10,000 for each vehicle).

Note: Taxpayers filing Form RUT-25 or Form RUT-25-LSE also are able to combine credit from multiple first division motor vehicles being traded in for a single transaction, as long as the trade-in credit reported for the transaction does not exceed $10,000 per first division motor vehicle. See the instructions for Form RUT-25-LSE for when trade-in credit is allowed.

The taxpayer may split credit for a single first division motor vehicle being traded in on multiple transactions, as long as the total combined trade-in credit reported for all transactions **does not exceed $10,000.**

Example: A motor vehicle retailer sells 2 new cars to the same purchaser, each for $7,000, and allows $12,000 for the trade in of one first division motor vehicle. The aggregate credit that the retailer may take on both returns for the traded-in first division motor vehicle is $10,000. The retailer may split the credit and apply it to each return (e.g., $5,000 to each

return or $7,000 to one return and $3,000 to the other), but the credit may not exceed $10,000 in the aggregate for both returns.

Trade-in Credit Changes - On or after January 1, 2022

Public Act (P.A.) 102-0353 removed the $10,000 trade-in credit limit for sales and purchases made on or after January 1, 2022.

There are three significant areas in the Use Tax on Purchases examination:

1. Fixed Asset Additions
2. Consumable Supply Purchases
3. Inventory Withdrawals for Personal Use or Consumption

This portion of the examination follows the same pattern as an audit of purchases on other taxpayers. There are certain areas that should be given mention, due to confusion which exists as to whether something is taxable or nontaxable and which tax (SOT or UT) applies.

12.6.1 Fixed Assets Purchases

An auditor should review the depreciation schedule and general ledger accounts to identify fixed asset purchases and should look for the following:

- Vehicles purchased originally for resale with no tax paid and placed in the company's capital assets and depreciated.

- Vehicles purchased for resale that are not normally sold by the purchaser. An example is a car dealer who purchases a pontoon boat and the boat isn't located on the dealer's premises. Another example is a boat dealer who buys, for resale, an off-road motorcycle. Another example is a recreational vehicle dealer who purchases a snowmobile and claims it is for resale.

12.6.2 Consumable Supply Purchases

An auditor should review the inventory and general ledger accounts to identify consumable supply purchases and should look for the following:

- Purchases of consumables classified as purchases of inventory. Items such as sandpaper, masking tape, cleaning agents and drill bits that are consumed by the dealership in the performance of sales of service and are not transferred incident to the sale of service are subject to Use Tax.
- Purchases of small tools or testing equipment that are included in invoices of parts bought for resale.
- Parts for company assets or outside repair work done on company assets where no tax is charged due to the vendor assuming the work being done is for resale or some other exemption such as rolling stock.
- Parts ordered and no tax paid for repair of company vehicles from a supplier who has a resale certificate on file for the dealer.
- Promotional items ordered for giveaways (not included in vehicle deals).

12.6.3 Inventory Withdrawals for Personal Use or Consumption

An auditor must ensure that parts purchased for resale and put into an inventory have not been withdrawn from inventory and used for any of the following:

- Withdrawal of inventory via parts counter tickets for use in repairing company or personal vehicles. If such withdrawals are used or consumed by the dealership, the inventory withdrawn is subject to Use Tax on cost.
- Withdrawal of parts from inventory for Goodwill repairs. The dealership is considered the end user when replacing parts on a vehicle with no charge to the customer.
- Withdrawal of parts from inventory for donations to other entities.

During the course of examining purchases by a taxpayer under audit, the auditor may come across private party purchases of motor vehicles, aircraft or watercraft where no tax has been paid or insufficient tax has been paid. The following sections provide a background on these private party transactions. The auditor needs to prepare separate audit processing returns.

12.7.1 Motor Vehicles (Private Party)

If a motor vehicle including cars, trucks, vans, motorcycles, motor homes, ATV's, low-speed vehicles and buses is purchased from a private party or acquired by gift or transfer, Vehicle Use Tax (i.e., RUT-50) is due. (86 Ill. Adm. Code 151). The selling price (or fair market value) of a vehicle determines which tax table to use. The selling price of a vehicle is the value given whether received in money or otherwise; this includes cash, credits, property, or service. When there is no stated selling price, such as in the case of a gift or even trade, the fair market value should be used. The fair market value may be obtained from a licensed dealer. The Use Tax Act states that "fair market value" means the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. 35 ILCS 105/3-10. See Section 3-1003 of the Vehicle Use Tax for the applicability of the Use Tax Act in administering the Vehicle Use Tax. 625 ILCS 5/3-1003.

Note: A trade-in deduction is **not** allowed on a private party transaction.

The following exemptions apply:

- purchaser is a tax-exempt organization;
- vehicle is a farm implement primarily used in production agriculture and not required to be registered under the Illinois Vehicle Code;
- vehicle is used for rolling stock;
- purchaser was an out-of-state resident and the vehicle was used outside of Illinois for at least three months (individuals only). Generally, the tax would not apply if the use of the motor vehicle is not subject to the Use Tax Act by reason of subsection (a), (c), (d), (e) or (f) of Section 3-55 of that Act dealing with the prevention of actual or likely multistate taxation;
-
- vehicle is an estate gift to a surviving spouse (including a party to a civil union).

12.7.2 Aircraft

Taxable Basis - Purchase Price or Fair Market Value - If the aircraft is purchased from a person or business that is not in the business of selling aircraft at retail, Aircraft Use Tax is due on the selling price. (86 Ill. Adm. Code 152) If the selling price is less than fair market value, tax is due on the aircraft's fair market value. If the aircraft is acquired by gift or transfer, tax is due on the aircraft's fair market value at the date of acquisition or the date brought into Illinois, whichever is later.

If a share of an aircraft is acquired, the greater of the selling price or fair market value **of the share** is subject to tax. Fractional share ownership in an aircraft would be subject to tax if the plane is used in Illinois.

Note: A trade-in deduction is **not** allowed on a private party transaction.

If the aircraft is acquired and used outside of Illinois prior to being brought into Illinois, credit will be given for tax properly due and paid to another state.

> **EXAMPLE:** A multi-state corporation leases a corporate aircraft from a related entity to transport its corporate executives on business travel throughout the United States. The aircraft is registered and hangered outside Illinois. As part of a corporate restructure, ownership of the aircraft will be moved to a new entity. The transfer of both possession and ownership of the aircraft will occur outside Illinois after June 30, 2023, and the transfer of the aircraft to the new entity will qualify as a tax-free capital contribution under the Internal Revenue Code. After completion of this restructuring the aircraft will be based in Illinois. This transfer is a taxable event in Illinois and Aircraft Use Tax is incurred.

The Federal Aviation Administration (FAA) uses a number known as the "N-Number" as a means of identifying aircraft. An N-Number for an aircraft is analogous to a license plate number for a car. It can be changed upon the owner's request, often to personalize the number. If determining ownership of an aircraft is a problem, the ROT Discovery Section in Springfield has access to information and documentation that may be helpful. A title and registration history is available from the FAA for any given aircraft. This may help in establishing legal ownership and determining whether the acquisition is a retail purchase or an exempt purchase.

The following exemptions are statutorily provided:

- ;
- The aircraft is acquired by an interstate carrier for hire for use as rolling stock to transport persons or commodities in interstate commerce;
- The aircraft is a gift to a beneficiary in an estate **and** the beneficiary is the surviving spouse;
- An aircraft that was acquired outside of Illinois and after being brought into Illinois and stored temporarily, is used solely outside Illinois. Generally, the tax would not apply if the use of the motor vehicle is not subject to the Use Tax Act by reason of subsection (a), (c), (d), or (e) of Section 3-55 of that Act dealing with the prevention of actual or likely multistate taxation.

12.7.3 Watercraft

Taxable Basis - Purchase Price Or Fair Market Value - 86 Ill. Adm. Code 153.110

Non-Retail Sales of Watercraft - If the watercraft is purchased from a person or business that is not in the business of selling watercraft at retail, Watercraft Use Tax is due. (86 Ill. Adm. Code 153.) The rate of tax is 6.25% of the purchase price for each watercraft that is subject to tax under the Law [35 ILCS 158/15-15]. However, the purchase price shall not be less than the fair market value of the watercraft on the date the watercraft is purchased or the date the watercraft is brought into the State, whichever is later, unless the purchaser can document that a different value is reasonable.

Gifts and Other Transfers of Watercraft - If the watercraft is acquired by gift or transfer; tax is due on the watercraft's fair market value at the date of acquisition or the date brought into Illinois, whichever is later. The only exception is a watercraft transfer between immediate family members (i.e., a spouse, parent, brother, sister, or child). (86 Ill. Adm. Code 153.110(b))

In cases of gifts between immediate family members, no tax us due unless it appears from the facts and circumstances that the primary motivation for the transfer was to avoid the payment of tax.

Transfers of Fractional Shares of Watercraft - If a share of a watercraft is acquired, the greater of the purchase price or fair market value **of the share** is subject to tax. Fractional share ownership in a watercraft would be subject to tax if the watercraft were used in Illinois.

When an ownership share of a watercraft is acquired, the tax is imposed on the purchase price of that share. All owners are jointly and severally liable for any tax due as a result of the purchase, gift, or transfer of an ownership share of the watercraft. In the case of ownership shares sold between immediate family members, purchase price ordinarily means the consideration actually paid, unless it appears from the facts and circumstances that the primary motivation of the selling of the shares was the avoidance of tax. In the case of a share of a watercraft acquired by gift between family members, no tax is due unless it appears from the facts and circumstances that the primary motivation of the share transfer was the avoidance of tax. (86 Ill. Adm. Code 153.110(c)))

Credit for Taxes Paid - If the watercraft is acquired and used outside of Illinois prior to being brought into Illinois, credit will be given for tax properly due and paid to another state. No trade-in credit is allowed in a non-retail purchase transaction.

Non-taxable Transactions - 86 Ill. Adm. Code 153.115
The following exemptions are statutorily provided:

- The watercraft is acquired by an interstate carrier for hire for use as rolling stock to transport persons or commodities in interstate commerce;
- The watercraft is a gift to a beneficiary in an estate **and** the beneficiary is the surviving spouse;
- A watercraft that was acquired outside of Illinois and after being brought into Illinois and stored temporarily, is used solely outside Illinois. Generally, the tax would not apply if the use of the motor vehicle is not subject to the Use Tax Act by reason of subsection (a), (c), (d), or (e) of Section 3-55 of that Act dealing with the prevention of actual or likely multistate taxation;
- The watercraft is exempted from the numbering provisions of Section 3-12 of the Boat Registration and Safety Act (625 ILCS 45/3-12). However, tax is owed on any watercraft that is exempted from the numbering provisions of paragraphs A, B, C, F, and G of Section 3-12 of the Boat Registration and Safety Act if that watercraft is used on Illinois waters for more than 30 days in any calendar year. [35 ILCS 158/15-10]

NOTE: 625 ILCS 45/3-12 (B) states the following - "Already covered by a number in full force and effect which has been awarded to it pursuant to Federal law or a Federally-approved numbering system of another State, if such boat will not be within this State for a period in excess of 60 consecutive days."

12.7.4 Miscellaneous

Fuel Sold or Consumed in New or Used Vehicles - The fuel in the fuel tank of the vehicle at the time of sale is sold as part of the vehicle whether or not the charge for the fuel is separately stated. If the vehicle is sold at retail, sales tax applies to the selling price inclusive of the fuel. If the vehicle is

sold for resale, the fuel is also considered to be sold for resale. Fuel placed in the fuel tanks of vehicles of dealers and not sold with the vehicle is considered to be consumed and subject to tax. **ADA Modifications** Effective August 17, 1995, *modifications made to a motor vehicle, as defined in Section 1-146 of the Illinois Vehicle Code* [625 ILCS 5/1-146], *for the purpose of rendering it usable by a disabled person, qualify for the reduced rate of tax* (Section 2-10 of the Act). The low rate applies to modifications that enable a disabled person to drive a vehicle or that assist in the transportation of disabled persons. Examples of such modifications include, but are not limited to, special steering, braking, shifting or acceleration equipment or equipment that modifies the vehicle for accessibility, such as a chair lift. 86 Ill. Adm. Code 130.311(h)(1)

The following exemptions are allowed on retail sales of motor vehicles, aircraft and watercraft:

12.8.1 Retail Sales of Motor Vehicles to Nonresidents

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. 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. There are 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.

A 30-Day Permit (also known as a drive-away permit) allows out-of-State purchasers to drive newly purchased vehicles from the place of sale in Illinois to a destination outside Illinois. A 30-Day Permit may also be issued for a non-registered first or second division vehicle for the purpose of moving it within the State of Illinois. Any second division vehicle operating on a 30-Day Permit may operate only on empty weight. Dealers selling vehicles to non-residents may issue permits and deliver the vehicle at the dealer's Illinois place of business without incurring Illinois tax liability. Dealers are not authorized to transfer permits from one dealer to another. Each dealer is assigned numbered permits, and each is responsible for those permits issued to the dealership.

Retail sales made to non-residents who will register and title the vehicle outside of Illinois are exempt provided that the purchasers' state has a reciprocal "out-of-state buyer" exemption with the State of Illinois. Sales of ATVs, motorcycles, motor driven cycles, off-road motorcycles, watercraft, snowmobiles, or any other vehicle that is not eligible for registration to be driven or moved upon the highways under the Illinois Vehicle Code are not eligible for this exemption. 86 Ill. Adm. Code 130.605

The tax is not imposed upon the sale of a motor vehicle in this State, even though the motor vehicle is delivered in this State, if all of the following conditions are met:

(1) The motor vehicle is sold to a nonresident even though the motor vehicle is delivered to the nonresident in this State,
(2) If the motor vehicle is not to be titled in this State,
    - A drive-away permit for purposes of transporting the motor vehicle to a destination outside of Illinois is issued to the motor vehicle, or
    - If the nonresident purchaser has non-Illinois vehicle registration plates to transfer to the motor vehicle for the purpose of transporting the vehicle outside of Illinois.
(3) The issuance of the drive-away permit or having the out-of-state registration plates to be transferred is prima facie evidence that the motor vehicle will not be titled in this State.

Effective July 1, 2008, if a retailer claims this exemption, the retailer must keep evidence that the purchaser is not a resident of Illinois with the records related to the sale (e.g., in the deal jacket). (86 Ill. Adm. Code 130.605(b) Form ST-588, Non-residency Exemption Certification for Sales and Leases of Motor Vehicles and Trailers, should be used when claiming a non-residency exemption.

12.8.2 Allowance or Disallowance of Exemption

If the retailer meets the requirements to document the exemption, then, absent fraud, the Department shall not pursue any claim that the exemption does not apply against the retailer but will pursue the questioned use of the exemption solely against the vehicle purchaser.

However, if the retailer does not meet the requirements to document the exemption claimed by the retailer shall be disallowed and subject to further review by the Department.

12.8.3 Special Provisions

Purchased For Lease - When the motor vehicle is purchased for lease and delivered to a lessee, the provisions in 86 Ill. Adm. Code 130.605(b)(1) shall apply to the lessee as if the lessee is the purchaser of such motor vehicle. 86 Ill. Adm. Code 130.605(b)(1)(B)

30-Day Rule - If the purchaser of a motor vehicle claims the out-of-state buyer exemption and the motor vehicle is then used in Illinois for 30 or more days in a calendar year, the purchaser is liable for Use Tax on the purchase price of the motor vehicle, subject to credit for tax properly due and paid to any other state. The assessment of tax by the Department is limited to the period for which it may issue a notice of tax liability under the Use Tax Act. 86 Ill. Adm. Code 150.310(a)(7).

12.8.4 Non-Reciprocal Buyer

Tax must be collected when a motor vehicle or trailer is sold to a nonresident who will title it in a state that does not give Illinois residents a “nonresident buyer” exemption on their purchases of motor vehicles or trailers that will be titled in Illinois (i.e., there is no reciprocal exemption). See Information Bulletin FY 2005-13 and, ST-58, Reciprocal -- Non-Reciprocal Vehicle Tax Rate Chart, for a listing of the reciprocating and non-reciprocating states. 86 Ill. Adm. Code 130.605(b)(1)(C).

12.8.5 Indiana Purchasers of RVs and Cargo Trailers

If a recreational vehicle (RV) or a cargo trailer is sold to a purchaser that will title or register that item in Indiana, the transaction is exempt from Illinois Retailers’ Occupation and Use Tax if a drive-away permit is issued or the Indiana purchaser has vehicle registration plates to transfer to the vehicle upon returning to Indiana. Informational Bulletin FY 2006-11. This provision does not apply to any other vehicle sale made to an Indiana resident.

12.8.6 Sale for Resale

A sale for resale exemption may be applied if the customer is purchasing the item for resale. 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. 86 Ill. Adm. Code 130.1405.

12.8.7 Exempt Organizations

In order for a sale to qualify for this exemption, the purchaser must provide the seller with a copy of the organization's active Illinois exemption identification number ((E--number) issued by the Department of Revenue. This number will begin with the letter "E" followed by 10 digits (for example, E 9999-9999-01). Exempt organizations include government entities, charitable organizations, religious organizations, educational organizations and not-for profit companies issued an E-number by the Illinois Department of Revenue.

Effective August 20, 1999, motor vehicles that are donated to organizations determined by Illinois Department of Revenue to be organized and operated exclusively for educational purposes (e.g., public and private schools) are exempt from sales and use tax. Exemption certificates must be executed by the purchaser prior to the sale. Reference 86 Ill. Adm. 86 Ill. Adm. Code 130.2081 and 86 Ill. Adm. Code 140.125(jj).

12.8.8 Interstate Commerce – Rolling Stock (Vehicles and Trailers)

Sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce are exempt from state, local and mass transit taxes. The term "Rolling Stock" includes transportation vehicles of interstate transportation companies for hire.

The taxpayer must have documentation to support a rolling stock deduction. The exemption does not apply to vehicles used (See 86 Ill. Adm. Code 130.340)

- to transport company officers, employees, customers, or others not for hire (even if these persons cross state lines);
- to transport property that a business owns or is selling and delivering to customers (even if the items cross state lines); or
- as support vehicles (other than those specifically used for "escort" service) when the vehicles do not haul persons or commodities for hire in interstate commerce (i.e., garbage trucks). (See X-L Disposal V. Department Of Revenue, 304 Ill. App.3d 202 [4th Dist. 1999])

The carrier/purchaser must give the seller certification (RUT-7, Rolling Stock Certification) stating that it is an interstate carrier for hire and is purchasing the property for use as rolling stock moving in interstate commerce. The carrier's Interstate Commerce Commission Certificate of Authority number must also be presented to the seller.

> Note: When the lessee certifies to the lessor that a vehicle qualifies for the rolling stock exemption and it is later determined that it does not qualify for the exemption, the tax should be assessed on the lessor. This is true even if the lessee supplied a RUT-7 to the lessor. Form RUT-7, Rolling Stock Certification, must be kept by the seller to qualify the purchase as exempt from tax.

Beginning August 24, 2017, Public Act (P.A.) 100-321 changed what qualifies for the rolling stock exemption on purchases of certain motor vehicles and trailers (and repair and replacement parts for motor vehicles and trailers) made on or after that date.

To qualify for the rolling stock exemption,

- the motor vehicle or trailer must be used to transport persons or property for hire,

- the purchaser must certify the motor vehicle or trailer will be utilized by an interstate carrier for hire who holds an active USDOT number with the carrier operation listed as “interstate” and the operation classification listed as “authorized for hire,” “exempt for hire,” or both “authorized for hire” and “exempt for hire,” *and*
- for motor vehicles, the gross vehicle weight rating must exceed 16,000 pounds.

* The second item above does not apply to a motor vehicle or trailer used at an airport to support the operation of an aircraft moving in interstate commerce, as long as the motor vehicle or trailer otherwise qualifies under the above criteria.

To claim a rolling stock exemption, the purchaser must be an owner, lessor, or shipper purchasing tangible personal property that will be utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce. The dealer will include the interstate carrier’s Certificate of Authority Number on the sales tax return.

12.8.9 Interstate Commerce – Rolling Stock (Other)

To claim a rolling stock exemption on aircraft, watercraft, limousines, and rail carrier items, the purchaser must indicate the method the item purchased qualifies for the exemption. Purchasers claiming the rolling stock exemption on aircraft, watercraft, limousines, and rail carrier items must qualify for the exemption using specific usage tests (generally, trips or miles), and at the time of purchase, they must identify which method of qualifying will be used:

- Aircraft and watercraft must carry persons or property for hire in interstate commerce for more than 50 percent of their total trips or miles/hours in each 12-month period.
- Limousines must carry persons or property for hire in interstate commerce for more than 50 percent of their total trips or miles in each 12-month period. Rideshare services are not eligible for the rolling stock exemption.
- Rail carrier items must be used as rolling stock to haul persons or property for hire in interstate commerce on a regular and frequent basis.

Purchasers of aircraft, watercraft, limousines, and rail carrier items must certify their eligibility for the rolling stock exemption using Form RUT-7-A Rolling Stock Certification for Aircraft, Watercraft, Limousines, and Rail Carrier Items. At the time the item is purchased, the purchaser must indicate the “trips” or “mileage” method (except for rail carrier items). If the purchaser does not indicate the method of qualification, the department will consider the purchaser to have chosen the mileage method. Form RUT-7-A may also be used to claim a rolling stock exemption on repair and replacement parts for qualifying aircraft, watercraft, limousines, and rail carrier items. 86 Ill. Adm. Code 130.340. ST-9, A Guide for Reporting Sales Using FORM ST-556; ST-9-LSE A Guide for Reporting Sales Using FORM ST-556-LSE

12.8.10 Sold for Rental Use

Effective January 1, 2014, automobile rental companies are required to collect Automobile Renting Occupation and Use Tax (“ART") on a new class of vehicle rentals — Second Division motor vehicles with a Gross Vehicle Weight Rating of 8,000 pounds or less, which includes pickup trucks vans,

motorcycles and motor-driven cycles, motor homes and recreational vehicles, and sport utility vehicles. Informational Bulletin FY 2014-09. 86 Ill. Adm. Code 180.101.

Only the following types of motor vehicles may be sold tax exempt for rental purposes:

- first division passenger automobiles designed to carry not more than 10 persons;
- passenger vans designed for the transportation of not fewer than seven or more than 16 persons;
- second division, self-contained motor vehicles 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;
- second division motor vehicles with a gross vehicle weight rating of 8,000 pounds or less; or
- motorcycles or motor driven cycles

12.8.11 Demonstration and Interim Use

The law provides that a purchaser of tangible personal property who gives a resale certificate for such property and who uses the property solely for demonstration or interim use while holding it for sale in the regular course of business, is not required to pay tax if certain criteria are met.

Interim Use Exclusion (See 86 Ill. Adm. Code 150.306(a)) **-** Beginning July 1, 2008, the following provisions apply to persons claiming the interim use exclusion:

Specific Prohibitions. The interim use exclusion may not be claimed for any item if any of the following circumstances exist:

- Title to the item is held by any party other than the retailer, except that such title may be held by the retailer, the manufacturer of that item, or a captive finance company (a wholly owned subsidiary of a manufacturing company that finances wholesale or retail purchases from that manufacturing company);
- The retailer elects to claim an Internal Revenue Code Section 179 deduction on the item as a depreciable business asset; or
- If the item is leased or rented by the retailer, the aggregate gross receipts received from all leasing or renting of the item by the retailer exceeds the retailer's selling price of the item.

Safe Harbor Rule. For items that are not excluded (prohibited) from the exemptions listed above, interim use will be deemed to occur if the retailer satisfies **all** of the requirements below:

- The item is one of the following:
  - Listed in the retailer's records as part of inventory;
  - Not depreciated by the retailer under Internal Revenue Code Section 167; or
  - Otherwise shown by the retailer's records, documents, or through its operations as available for sale during the interim use period.
- The period of use or lease of the item by the retailer is less than 24 months.
- The item is of the same general type of property sold by the retailer.
- The item is ultimately sold by the retailer.

- If the retailer receives revenues from the lease of the same general type of property as the item for which interim use is claimed, then the annual total of such lease revenues must be less than the annual total of the sales revenues received from such property.
- If the item is leased under a lease agreement for more than 30 days, the lease agreement must contain a provision that if the retailer locates a buyer for the item (i) the lease may be terminated within 7 days or (ii) the lessee receive comparable property substituted by the retailer for the item within 7 days.

Examples of vehicle use in which the dealer may claim the exemption by indicating that the vehicle is available for sale are:

1. Demonstrators - Vehicles owned by dealers who do not allow their personnel to use such vehicles for purposes other than demonstration and interim use.
2. Loaners –Vehicles loaned to customers who are awaiting delivery of vehicles purchased from the dealer, or while the customer's vehicle is being repaired by the dealer.
3. Company Cars - Those vehicles available chiefly for company use by employees and with very little use, if any, for demonstration or display.
4. Service Vehicles – Service vehicles are similar to loaner vehicles. Service vehicles would not be subject to tax if the taxpayer’s intent is to ultimately sell the vehicles at retail.

Tangible personal property purchased by a retailer for resale and used by the retailer or their agents prior to its ultimate sale at retail, is exempt from Use Tax, provided that the tangible personal property is of the same general type of property sold by that retailer and is carried as inventory on the books of the retailer or is otherwise available for sale during the interim use period. The period of use or lease of the item by the retailer must be less than 24 months. Refer to 86 Ill. Adm. Code 150.306(a)(1)(B) for additional requirements.

Demonstration Use Exclusion (See 86 Ill. Adm. Code 150.306(b)) **-** The demonstration use exclusion does not extend to property which is destroyed or consumed during demonstration. The demonstration use exclusion cannot be claimed by a retailer on the purchase of a competitor's product which will be used in comparison demonstrations of the retailer's product. Also, the demonstration use exclusion cannot be claimed on ancillary items which are used in demonstrating a product.

When determining if something qualifies for interim use the auditor should ensure that they discuss this with the taxpayer. Interim use and demonstration use are both similar; however, a taxpayer that does not qualify under some interim constraints may qualify under the demonstration use constraints. constrains.

Aircraft and Watercraft (Time Limitation on Interim Use)

For aircraft and watercraft, a retailer has 18 months from the date the aircraft or watercraft is purchased and placed in either interim or demonstration use to sell the aircraft or watercraft without incurring Illinois Use Tax on their original cost. The retailer may file an ST-556 Return to remit the tax due upon the expiration of the interim or demonstration use period. The retailer is not entitled to a

retailer's discount on the ST-556 return since the retailer is remitting an Illinois Use Tax obligation. No credit for Use Tax paid is permitted if the aircraft or watercraft is subsequently sold by the retailer.

NOTE: A watercraft dealer must make application to the Illinois Department of Natural Resources before a watercraft can be used for demonstration or interim use. The Department of Natural Resources will issue a license and stickers to use when test driving or demonstrating a watercraft. Once the watercraft is used for demonstration or interim use it cannot be used as a rental until use tax is paid to the Department of Revenue.

Manufacturers and Distributors of Motor Vehicles - Interim Use

Beginning on July 1, 2008, and thereafter, a manufacturer may claim the interim use exclusion *for tangible personal property leased to its employees, or is otherwise used by its employees, only when the manufacturer is registered as a retailer and the use of that property would qualify under all of the requirements of subsection* 150.306 *(a) and (c)*. 86 Ill. Adm. Code 150.306(a)(5)

Motor vehicle manufacturing and distributing companies sometimes use vehicles for their own purposes. If such vehicles are going to be resold, the use of the vehicles by the companies or by their employees may constitute interim use. When taxable, the measure of tax for vehicles used by the manufacturing entity is based on the manufacturer's cost of materials. In the case of distributors, the measure of tax would be the distributor's purchase price of the vehicles. (See 86 Ill. Adm. Code 150.306(a)(5) and the following appellate court cases: HUMPHREY CADILLAC AND OLDS INC V. DEPARTMENT OF REVENUE, 68 Ill. App. 3d 27, 385 N.E. 2d 846 (2nd. Dist. 1979), and WEAVER-YEMM CHEVROLET, INC. V. DIRECTOR, DEPARTMENT OF REVENUE, 87 Ill. App. 3d 83 (3rd. Dist. 1980)

12.8.12 Other Exemptions

Some examples of other exempt transactions are sales

- to foreign missions or diplomats – 130.2080(b);
- for interim use or demonstration purposes – 150.306(a) and (b);
- fuel used in ready-mix concrete trucks – 130.330(h)(2)(E);
- vehicles delivered by the dealer out of state – 130.605(d)
- vehicles delivered by the dealer into foreign commerce – 130.605(g); or
- of motor vehicles as farm machinery and equipment – 130.305(h).
    - Included in this exemption are implements of husbandry defined in Section 1-130 of the Illinois Vehicle Code, fertilizer spreaders, and nurse wagons required to be registered under Section 3-809 of the Illinois Vehicle Code.
    - Excluded from this exemption are other motor vehicles required to be registered pursuant to the Illinois Vehicle Code. Registered vehicles other than motor vehicles may qualify for the exemption if they are used primarily in production agriculture rather than in transportation or other nonexempt activities. Examples of this include implements of husbandry used primarily to supply and apply farm chemicals; trailers and nurse tanks used primarily to supply spreaders in the fields; and aircraft used primarily to apply farm chemicals.

Note: The definition of ATV per the Illinois Vehicle Code states they are an “off highway device”. Therefore, they are not required to be registered. ATVs do not generally qualify for exemptions because the exemptions do not extend to general farm transportation or recreation. ATV’s may qualify for the farm machinery and equipment exemption if they are used primarily (more than 50% of the time) in production agriculture activities such as pulling sprayers while they apply chemicals to fields or collecting and mapping soil samples. The use of ATV’s for farm transportation or recreation purposes does not constitute production agriculture. The farm machinery and equipment exemption may be documented using Form ST-587, Equipment Exemption Certificate. Certification must be maintained in the dealer’s books and records.

12.9.1 Reimagining Energy and Vehicles in Illinois Act (20 ILCS 686)

Effective November 16, 2021, the Retailers' Occupation Tax Act (35 ILCS 120/5m) was amended to allow a building materials exemption for building materials incorporated into real estate in an electric vehicle manufacturing facility, an electric vehicle component parts manufacturing facility, or an electric vehicle power supply manufacturing facility which is participating in a Reimagining Energy and Vehicles in Illinois (REV Illinois) Project. 20 ILCS 686/105.

To document this exemption, the retailer must obtain the purchaser's REV Illinois Building Materials Exemption certificate number issued by Illinois Department of Revenue. A construction contractor or other entity cannot make tax-free purchases unless it has an active REV Illinois Building Materials Exemption Certificate issued by Illinois Department of Revenue at the time of purchase. This exemption is not subject to the sunset provisions.

12.9.2 Manufacturing Illinois Chips for Real Opportunity (MICRO) Act (35 ILCS 45)

Effective April 19, 2022, the Retailers' Occupation Tax Act (35 ILCS 120/5n) was amended to allow a building materials exemption for building materials incorporated into real estate in a facility for the manufacturing of semiconductors in a MICRO Project. 35 ILCS 45/110-105.

To document this exemption, the retailer must obtain the purchaser's MICRO Illinois Building Materials Exemption certificate number issued by Illinois Department of Revenue. A construction contractor or other entity cannot make tax-free purchases unless it has an active MICRO Illinois Building Materials Exemption Certificate issued by Illinois Department of Revenue at the time of purchase. This exemption is not subject to the sunset provisions.

Effective February 5, 2020, Illinois Public Act 101-629 amended the Use Tax Act (35 ILCS 105/3-5), the Service Use Tax Act (35 ILCS 110/3-5), the Service Occupation Tax Act (35 ILCS 115/3-5), and the Retailers' Occupation Tax Act (35 ILCS 120/2-5), to extend to December 31, 2024, the exemption for materials, parts, equipment, components, and furnishings incorporated into or upon an aircraft as part of the modification, refurbishment, completion, replacement, repair, or maintenance of the aircraft .

Until January 1, 2024, this exemption excludes any materials, parts, equipment, components, and consumable supplies used in the modification, replacement, repair, and maintenance of aircraft engines or power plants, whether such engines or power plants are installed or uninstalled upon any such aircraft.

This exemption applies only to those organizations that:

- Hold an Air Agency Certificate and are empowered to operate an approved repair station by the Federal Aviation Administration,
- Have a Class IV Rating, and
- Conduct operations in accordance with Part 145 of the Federal Aviation Regulations.

The aircraft maintenance and modification exemption does not include aircraft operated by a commercial air carrier providing scheduled passenger air service pursuant to authority issued under Part 121 or Part 129 of the Federal Aviation Regulations.

Public Act 101-629 not only extends the time under which the exemption can be claimed, it provides that the extension applies continuously from January 1, 2010 (i.e., the date it was enacted) through December 31, 2024. Public Act 101-629 does not allow any claims for credit or refund for taxes paid as a result of the disallowance of this exemption on or after January 1, 2015, prior to its reenactment effective February 5, 2020. (See Informational Bulletin FY 2021-15)

"Consumable supplies" include, but are not limited to, adhesive, tape, sandpaper, general purpose lubricants, cleaning solution, latex gloves, and protective films.

Under the Use Tax Act, this exemption applies only to the use of qualifying tangible personal property by persons who modify, refurbish, complete, repair, replace, or maintain aircraft and meet the criteria above. 35 ILCS 105/3-5(35)

Under the Retailer's Occupation Tax Act, this exemption applies only to the sale of qualifying tangible personal property to persons who modify, refurbish, complete, replace, or maintain an aircraft and who meet the criteria above. 35 ILCS 120/2-5(40)

Under the Service Use Tax Act, this exemption applies only to the use of qualifying tangible personal property transferred incident to the modification, refurbishment, completion, replacement, repair, or maintenance of aircraft by persons who meet the criteria above. 35 ILCS 110/3-5(27)

Under the Service Occupation Tax Act, this exemption applies only to the transfer of qualifying tangible personal property incident to the modification, refurbishment, completion, replacement, repair, or maintenance of an aircraft by persons who meet the criteria above. 35 ILCS 115/3-5(29)

The sunset date of the Aircraft Refurbishment and Repair Exemption was extended under the Retailers' Occupation Tax Act, Use Tax Act, Service Occupation Tax Act, and Service Use Tax Act from December 31, 2024, to December 31, 2029.

Beginning on and after January 1, 2024, through December 31, 2029, in addition to the previously qualifying transactions (transactions for the use of qualifying tangible personal property by persons who modify, refurbish, complete, repair, replace, or maintain aircraft and who (i) hold an Air Agency Certificate and are empowered to operate an approved repair station by the Federal Aviation Administration, (ii) have a Class IV Rating, and (iii) conduct operations in accordance with Part 145 of the Federal Aviation Regulations), this exemption applies to persons who engage in the modification, replacement, repair, and maintenance of aircraft engines or power plants without regard to whether or not those persons meet the originally required qualifications for the exemption.

12.11.1 Transfers of Equity

A transfer of equity is a sale between two individuals in which the purchaser assumes the conditional sales contract balance of the seller. In a transfer of equity, the dealer has no function other than the approval of the transferee and results in no additional tax liability to the dealer. In such case, the dealer's participation extends only to the bringing of the buyer and seller together with the negotiations handled by the buyer and seller and the lending institution.

If, however, the dealer assists to the extent of displaying the vehicle or obtaining the transferee and negotiating the transfer at the dealer's place of business without disclosing the true owner's name, a sale subject to tax has occurred. The involvement of dealers in these transfers occurs when the dealer does not disclose the name of the seller or has liability to the lending institution on recourse. The dealer, in order to forestall a repossession, may attempt to encourage a transfer of equity. Evidence of equity transfers are most likely to be found in a customer folder prepared on the transferee. See 86 Ill. Adm. Code 130.1915, Auctioneers and Agents.

12.11.2 Consigned Vehicles

Consigned vehicles are usually customers' used vehicles which the dealer sells on behalf of those customers. In a consignment sale, the dealer has possession of the vehicle and displays the unit with the used inventory. The rules regarding the sales by auctioneers and agents apply to consignment sales. The person who is liable for Retailers' Occupation Tax will depend on whether the auctioneer or agent is working on behalf of a disclosed or undisclosed principal. 86 Ill. Adm. Code 130.1915.

Dealerships must have the following documents when selling a vehicle on consignment:

- Letter of Consignment form;
- Proper ownership document or a copy if the original document is in the possession of the lien holder; and
- When applicable, a Power of Attorney authorizing the dealership to assign the ownership document. In accordance with 625 ILCS 5/5-401.2, all consignment sales must be reflected in the records required to be kept by dealerships.

For information regarding Marketplace Facilitators and Auctioneers as Marketplace Facilitators, refer to Sales Tax Audit Manual Chapter 7, Remote Retailers and Leveling The Playing Field, Section 7.4.

12.11.3 Accommodation Sales

Accommodation sales differ from consignment sales in that the vehicles are usually the personal cars of management personnel, salespersons, or employees. It is immaterial that it was displayed at the dealer's place of business. The rules regarding the sales by auctioneers and agents apply to accommodation sales. The person who is liable for Retailers' Occupation Tax will depend on whether the auctioneer or agent is working on behalf of a disclosed or undisclosed principal. 86 Ill. Adm. Code 130.1915. The dealer will be liable for tax only if the name of the seller is not disclosed to the purchaser at or before the time of sale.

Sales of service are found in the Service/Mechanical Area and Body Shop Area of the dealership. Such sales include regular customer repair orders, warranty repair orders and internal repair orders. Normally, repair orders are sequentially numbered with separate series for the body shop work orders, service/mechanical work orders, warranty work orders, and internal work orders, as well as separate sales journals for each. Another type of repair is a goodwill repair. Under a goodwill repair the dealer will often not charge a customer for the repair. Under a goodwill repair the dealer owes tax on the parts transferred since the dealer is considered the final user of the parts transferred. If the dealer pays another person to make the goodwill repair, a service situation exists. The tax liability depends on the nature of the serviceman.

12.12.1 Determining Tax Liability

i) If the serviceman is de minimis and is not required to be registered under Section 2a of the Retailers' Occupation Tax Act, the serviceman incurs a Use Tax liability based on their cost price of the parts transferred in making the repair. (See 86 Ill. Adm. Code 140.108.) In this situation, the seller (as the service customer) incurs no tax liability and the serviceman cannot charge "tax" to the seller. (See 86 Ill. Adm. Code 140.108(a)(3))

ii) If the serviceman is de minimis and is required to be registered under Section 2a of the Retailers' Occupation Tax Act or is de minimis and is registered under the Service Occupation Tax Act, the serviceman incurs a Service Occupation Tax liability based on their cost price of the parts transferred incident to the repair. (See 86 Ill. Adm. Code 140.109.) In this situation, the service customer incurs a Service Use Tax liability that is to be collected by the serviceman. The serviceman may show this Service Use Tax as a separate item on their billing to the service customer but is not required to do so unless the service customer requests that it be so shown. (See 86 Ill. Adm. Code 140.109(a) (4).)

iii) If the serviceman incurs Service Occupation Tax on their selling price and separately states the selling price of the parts transferred in making the repair, the tax is based on the separately stated selling price of the parts (but not less than the serviceman's cost price of those parts). (See 86 Ill. Adm. Code 140.106(a) (1).) If the serviceman incurs Service Occupation Tax on their selling price and does not separately state the selling price of the parts, then the tax is incurred on 50% of the serviceman's entire service billing (but not less than the serviceman's cost price of the parts transferred). (See 86 Ill. Adm. Code 140.106(a) (2).) In these situations, the service customer incurs a Service Use Tax liability that is to be collected by the serviceman. The serviceman may show this Service Use Tax as a separate item on their billing to the service customer but is not required to do so unless the service customer requests that it be so shown. (See 86 Ill. Adm. Code 140.106(e).)

12.12.2 Customer Repair Orders

Customer repair orders may be for service/mechanical repairs or body shop repairs on customer owned vehicles. Typically, automobile dealers charge tax on the selling price of parts used in making car repairs. After January 1, 1990, automobile dealers had to determine their tax liability for repair situations in the same manner as any other serviceperson which is dependent upon whether their

cost of parts transferred in service situations is less than or greater than 35% of the total receipts from providing services.

It is important to determine the taxpayer's method for charging tax to its customers (i.e., on selling price, on cost, or other) in order to properly review tax remittances to the Department. Early determination of the taxpayer's method of charging tax will also allow the auditor to choose an appropriate method of proceeding in this area of examination.

Most dealers' invoices/repair orders will separately distinguish between labor, parts, sublet repair, gas, oil, grease and tires. Oil changes are considered Service Occupation Tax transactions. Please refer to 86 Ill. Adm. Code 140.140(j).

The taxpayer/serviceman usually charges a shop supply charge, miscellaneous charge, or environmental charge. This charge is usually included in the tax base of the repair order. This charge is taxable because it will include items transferred to the customer such as wheel weights, stems, valves, nuts, bolts, adhesives, cable ties, etc. If the taxpayer is not charging tax on this charge, Service Occupation Tax should be assessed.

Some dealers, especially in connection with their body shop areas, will charge a customer on the invoice for miscellaneous shop supply items such as cleaners, paper towels, cutting blades, sandpaper, masking tape and any other materials used in their operation. Service Occupation Tax is not due on these items as they are consumable supply items and are not transferred to the customer. The dealers should be paying use tax and should not be attempting to collect an amount designated as tax on these items. The dealers can reimburse themselves for the use tax paid on such items by including the tax in the charge for the items or by stating a reimbursement charge for the tax as a separate item on the invoice.

Example: The taxpayer may charge for flush kits used in the performance of their service to their customer. These kits are used on brakes, fuel injectors, radiators, or engines. The kit is usually charged out as a part and included in the tax base on the repair order. These kits are not transferred to the customer. The kits include a filter and the cleaning chemicals. The filter fits on the car dealers' equipment and is used with the chemicals to flush out or clean the appropriate part. None of the items are transferred to the customer. The dealer owes use tax on these kits when purchased.

12.12.3 Multi-Service Situations – Sublet Repairs

Multi-service situations exist when a primary serviceman subcontracts work to a secondary serviceman. See 86 Ill. Adm. Code 140.145. A primary serviceman engages the services of a secondary serviceman in order to obtain part or all of the products and services desired by the service customer. Depending upon whether the primary and secondary servicemen are registered or de minimus will determine at what point Service Occupation Tax or Use Tax will be incurred. In multi-service situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman, or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. See 86 Ill. Adm. Code 140.301(a).

When both primary servicemen and secondary servicemen are registered, primary servicemen provide secondary servicemen with a Certificate of Resale. A primary serviceman would then incur Service Occupation Tax based upon the separately stated selling price of the property or 50% of the bill to the service customers. If the primary serviceman is registered and de minimus (that is, under the 35% threshold, or the 75% for pharmacists and printers), he may choose to remit Service Occupation Tax to the Department based upon his cost price of tangible personal property purchased from the secondary serviceman. If the cost price of the tangible personal property is not separately stated by the secondary serviceman, the cost price will be deemed to be 50% of the total bill from the secondary serviceman. Upon selling their product, servicemen are required to collect the corresponding Service Use Tax from their customers.

If an unregistered de minimis serviceman subcontracts service work to another unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman. This certification option is only available in multi-service situations when both the primary and secondary servicemen are unregistered and de minimis.

Transactions involving multiple servicemen work best if both the primary and secondary servicemen are registered. This will enable both parties to utilize Certificates of Resale. If the primary serviceman is registered and the secondary serviceman is not registered, it is possible that tax will be incurred at more than one point during the course of sale of a particular item. This will occur if the unregistered secondary serviceman has paid Use Tax with respect to an item of tangible personal property, then transfers that property to a primary serviceman who will, in turn, incur a Service Occupation Tax liability when transferring the item to the service customer.

Sublet repair is often an area not properly understood by the taxpayer. The auditor must measure the taxpayer's operations in this area in relationship to 86 Ill. Adm. Code 140.145. If it is determined the taxpayer is not in compliance with the law concerning sublet repair, it is generally easier to measure the extent of error by examination of sublet inventory purchases.

Most dealers set up the sublet as a labor charge and do not tax any tangible personal property transferred in the sublet. Invoices involving sublet repairs should be examined to determine if any tangible personal property has been transferred.

Sublet—Accessories: Per 86 Ill. Adm. Code 130.2015(1)(C) accessories are subject to Retailers' Occupation Tax. Even if the taxpayer is taxing 50% of their sublet charge, sometimes the item that was installed would qualify as an accessory. Items such as radios, sunroofs or keyless alarm systems are accessories, and the entire selling price would be subject to tax if it is a lump sum billing. Per 86 Ill. Adm. Code 130.450(a), when such installation, alteration or other special service charges are included in the selling price of the tangible personal property which is sold, then the entire selling price is subject to Retailers' Occupation Tax.

12.12.4 Internal Repair Orders

Internal repair orders may be for:

1. Service-mechanical repairs or

2. Body shop repairs on dealer inventory/stock. Internal repair orders may be utilized for several different purposes by a taxpayer and result in different tax consequences.

For example, internal repair orders may be used:

- To account for reconditioning of used vehicle inventory acquired. Reconditioning of used vehicle inventory is repair/upgrading of used cars from "as received" condition to prepare them for resale. Parts purchased or withdrawn from inventory to recondition a used vehicle for resale are not taxable. They are included in the selling price of the reconditioned vehicle and will be subject to Retailers' Occupation Tax at the time the vehicle is sold.

- To account for the repair or maintenance of a company vehicle or company service vehicle. Parts purchased or withdrawn from inventory to repair or maintain company vehicles are subject to use tax.

- To account for the repair or maintenance of a vehicle held in interim use. If repair parts or accessories are incorporated into a vehicle held for resale, but which is utilized pursuant to an interim use exemption, to the extent that those repair parts need to be replaced before the vehicles are actually sold, Use Tax would be due on those parts if they are replaced prior to the sale of the vehicles.

d) To account for dealer added options of new vehicle inventory. Options added should be included in the selling price of the new vehicle and will be subject to Retailers' Occupation Tax with the sale of the vehicle.

e) To account for parts transferred incident to repair of a vehicle that will be used as a dealer demo car. If a dealer demo car is involved in an accident, the replacement parts that are transferred to the car are tax exempt. These parts are deemed to be a sale for resale provided that the car qualifies under the interim use or demonstration use exemption.86 Ill Adm Code 140.125 and 150.306

f) To account for items given away as a part of the sale or for other promotional giveaways. If the dealer has a package of promotional items given to every purchaser, then those items would be included in the selling price of the vehicle and would not be subject to use tax. Periodically, the dealer may give away promotional items to entice customers to buy a vehicle. The dealer must pay use tax on the cost of these promotional items.

Warranty repair orders may be for service/mechanical repairs or body shop repairs. In general, warranty work means that a former sale is being reinforced and the customer/owner of the vehicle is not required to make any additional payments for the work performed. With the exception of the factory warranty, product recalls and certified used car warranties which requires no additional payment by the customer/owner of the vehicle, the taxability of service contracts or maintenance agreements (warranties) depends upon if the charges for those agreements are included in the selling prices of the tangible personal property. If such charges are included in the selling price, those charges are part of the gross receipts of the retail transactions and are subject to tax. If this is the case, no tax is incurred on the maintenance services or parts when the repairs or servicing is performed.

Transfers of repair parts, repair materials and other tangible personal property by persons who repair tangible personal property belonging to others as an incident of furnishing repair services are generally subject to tax under the Service Occupation Tax Act. (See 86 Ill. Adm. Code 140.140(l).)

12.13.1 Service Involving Maintenance Agreements and Extended Warranties

Maintenance agreements are usually not included in the retail selling price of the item covered by the maintenance agreement; and, for that reason, the selling price of the maintenance agreement are not subject to Retailers' Occupation Tax and Use Tax liability when the item is sold at retail. Consequently, repairs made under a maintenance agreement result in tax liability.

Extended warranties are a form of maintenance agreement and are subject to tax just as maintenance agreements are subject to tax.

The serviceman shall pay Use Tax to their supplier (or to the Department if the supplier is not registered to collect tax) on the cost price of tangible personal property purchased for transfer by the serviceman incident to completion of the maintenance agreement or an Extended Warranty. (See 86 Ill. Adm. Code 140.301(b)(3); 35 ILCS 105/3-75 and 35 ILCS 120/2-55.)

However, a serviceman will incur no tax liability on repairs made under a maintenance agreement for a person that is able to claim an exemption, either because of that person's exempt status (e.g., the person possesses an exemption identification number issued by the Department, such as the Federal or State government) or because the tangible personal property being repaired is exempt from tax (e.g., due to the manufacturing machinery, graphic arts or pollution control equipment exemptions).

12.13.2 Service Involving Factory Warranties, Certified Used Car Warranties and Product Recalls

When a seller/warrantor (e.g., a retailer or a manufacturer) is required to make a repair to an item under the terms of a warranty included in the retail selling price of that item, the repair parts and materials transferred incident to the repair are not subject to tax. This is because the warranty (and the work to be done under the warranty) was included as part of the retail selling price of the item and, as such, was subject to Retailers' Occupation Tax and Use Tax when the item was sold at retail. The warranty constitutes an agreement, included in the retail selling price of the item, that the item is free from defects in materials and workmanship and, if any such defect exists, it will be cured. The

warranty may be express or implied. So long as the seller/warrantor is obligated to make a repair under the terms of a warranty that was included in the retail selling price of the item, the repair is not subject to tax.

When a manufacturer makes a Product Recall, the manufacturer is required to correct the defect as the result of an enforceable agreement included in the retail selling price of the item that the item was being purchased free of manufacturing defects and the repairs are necessary to correct a manufacturing defect, no tax liability is incurred as a result of the repair.

Sometimes the auditor will run into situations where the car dealer performs work on a customer's car and the work is not only covered by the original factory warranty but is also covered by an extended warranty. The dealer decides to submit the claim to the factory under the extended warranty due to the fact that the deductible for their customer is lower under the extended warranty.

How the dealer submits their claim determines how it will be taxed. If submitted under the factory warranty, the rules applying to factory warranties will apply. If submitted under the extended warranty, then the tax rules for extended warranties will apply. It is necessary for the auditor to identify all of the particulars involved in any warranty work and measure compliance with the law.

Reference 86 Ill. Adm. Code 140.141, and Chapter 11, Topical Sections on Maintenance Agreements and also, Warranties.

12.13.3 Manufacturer's Express Warranty

When an item of tangible personal property is sold at retail, an express warranty from the manufacturer is often included in the selling price. This express warranty obligates the manufacturer to correct defects in materials and workmanship during a specified timeframe. When repairs are made under the terms of an express warranty, no tax is due, and this is true whether the manufacturer makes the repairs or whether the manufacturer pays someone else to make the repairs.

12.13.4 Certified Used Car Warranties

A certified used car warranty is usually sold with the vehicle and included in the selling price of the vehicle. Repairs will be exempt because the warranty was taxed in the selling price of the car. If the warranty was not included in the selling price of the vehicle, Service Occupation Tax will be due from the serviceman on the selling price of the tangible personal property stated on the repair order.

12.13.5 Repairs Made by a Seller

Alternatively, persons may sell service contracts or maintenance agreements as separate agreements for predetermined fees. In these transactions, the proceeds from the sale of such contracts or agreements are not subject to tax. However, servicemen who provide service under the separate maintenance agreements or service contracts incur Use Tax liability based on their cost price of the tangible personal property transferred incident to the completion of the maintenance agreements. Further, the purchaser of the separate agreement or warranty is not charged tax on the labor or tangible personal property that is transferred incident to the completion of the maintenance

agreement. If a deductible is charged to the purchaser under the terms of the separate agreement, the deductible is also not subject to tax. Repairs made by a seller (e.g., retailer or manufacturer) who is not obligated to make the repair under a warranty included in the retail selling price of the item result in a tax liability.

12.13.6 Maintenance Agreements

Maintenance agreements are contracts to provide repairs for a particular item within a stated time period and for a pre-determined fee. The party agreeing to provide service under a maintenance agreement may or may not be a seller of the item. However, the maintenance agreement is not included in the retail selling price of the item covered by the maintenance agreement; and, for that reason, the selling price of the maintenance agreement is not subject to Retailers' Occupation Tax and Use Tax liability when the item is sold at retail. Consequently, repairs made under a maintenance agreement result in tax liability. (See 86 Ill. Adm. Code 140.301(b)(3); 35 ILCS 105/3-75 and 35 ILCS 120/2-55.)

12.13.7 Extended Warranties

Extended warranties are contracts to provide repairs for a particular item for a stated period of time after a manufacturer's express warranty has expired. An extended warranty is not included in the selling price of the item covered by the extended warranty and, for that reason; the selling price of the extended warranty is not subject to Retailers' Occupation Tax and Use Tax liability when the item is sold at retail. Consequently, repairs made under an extended warranty result in tax liability. Extended warranties are a form of maintenance agreement and are subject to tax just as maintenance agreements are subject to tax. (See 86 Ill. Adm. Code 140.301(b) (3); 35 ILCS 105/3-75 and 35 ILCS 120/2-55.)

12.13.8 Safety Related Recall

Sometimes, a particular product line is recalled by a manufacturer to correct a manufacturing defect that relates to product safety. Such recalls can be made on the manufacturer's own initiative or as the result of a recommendation by a governmental agency such as the National Highway Traffic Safety Administration or the U.S. Consumer Product Safety Commission. In either event, when repairs are made in this situation, no tax is incurred as a result of those repairs even if the repairs are not required by the manufacturer's express warranty. This is because manufacturers make an implied warranty that the items, they sell are free from safety-related manufacturing defects. Repairs made under safety related recalls are not taxable and this is true whether the manufacturer makes the repairs or pays someone else to make the repairs. Reference 86 Ill. Adm. Code 140.141.

12.13.9 Non-Safety Related Recall

Sometimes, a particular product line is recalled by a manufacturer to correct a non-safety related defect in materials and workmanship. So long as the manufacturer is required to correct the defect as the result of an enforceable agreement included in the retail selling price of the item that the item was being purchased free of manufacturing defects and the repairs are necessary to correct a manufacturing defect, no tax liability is incurred as a result of the repair. Again, this is true whether

the manufacturer makes the repairs or pays someone else to make the repairs. It is also true even if the repairs are required to be made outside the time limits contained in the manufacturer's express warranty. Reference 86 IL. Adm. Code 140.141.

12.13.10 Goodwill Repairs

Goodwill repairs are repairs made by a seller for no charge that a seller is not obligated to make.

A) If the seller makes the goodwill repair themself, no service situation exists. This is because the seller makes the repair for no charge and cannot be said to be making a sale of service. Rather, in this situation, the seller is using repair parts to maintain the goodwill of a customer. For that reason, the seller making the goodwill repair themself incurs a Use Tax liability based on their cost price of all tangible personal property used in making the repair, including the repair parts transferred to the customer.

B) If the seller pays another person to make the goodwill repair, a service situation exists in which the person making the repairs is the serviceman and the seller is the service customer. In this situation, the tax liabilities depend on the nature of the serviceman.

C) If the manufacturer provides a goodwill repair, a Service Occupation Tax situation exists where Service Occupation Tax is due on the selling price of the parts charged back to the manufacturer. The manufacturer goodwill is taxable because it takes place outside the factory warranty period and it is a repair the manufacturer is not obligated to make.

Reference 86 Ill. Adm. Code 140.141 for additional guidelines on Warranty and Goodwill repairs.

A jumped title is a title on which an owner of the vehicle has not been shown. This may occur when a dealership takes vehicle/title and fails to record itself as an owner (used car inventory). When the dealer subsequently sells the vehicle, the subsequent purchaser's name is recorded as receiving the vehicle from the former owner (named title holder) rather than the dealer. Although the dealer's name was never listed as an owner on the title, the sale is still a taxable sale of the dealer.

Any options added to a vehicle by a dealer (i.e., alarms, rustproofing or fabric-guarding not separately contracted for, upgraded tires or radio, etc.) are a part of the new car selling price and must be included in taxable sales. These sales may be reported on the dealer's ST-556 or the dealer's ST-1. If these items are sold separately, they must be reported on the ST-1.

The majority of dealers do not make separate charges for delivery. When transportation and delivery charges are involved, they are nominal and must be examined for compliance with the provision of 86 Ill. Adm. Code 130.415. Freight-in or Incoming Freight is merely a cost of doing business and is a part of the new car selling price which must be included in taxable sales. 86 Ill. Adm. Code 130.415(b)(2)(B).

A charge for "documentary fees" may be made by some vehicle dealers for the preparation of transfer papers required by the Department of Revenue and Secretary of State but not limited thereto. The auditor should be alerted to detect these taxable charges since there is a tendency on the part of automobile dealers to consider them to be exempt from the tax. See Informational Bulletin FY 2010-06. (See court case of VELDE FORD SALES, INC. V. ILLINOIS DEPARTMENT OF REVENUE, 136 Ill. App.3d 589 (4th Dist. 1985))

New car dealers may allow a discount on new vehicle sales. The amount of discount on any sales may be reflected on the documents of sale and recorded in the sales journal as a discount. Discounts are netted from gross sales on the financial statements, either by decreasing sales or by showing the amount of discounts as minor amounts on the statements. New vehicle dealers will vary in their method of handling the discounts for reporting purposes. The mechanics of handling the discounts per the general ledger will be clear from the financial statements and sales tax working papers.

The auditor should be concerned with establishing the validity of the recorded discounts. The examination of the vehicle journals, and the reconciliation of the sales tax accrual account usually will disclose a dealer's practice of charging tax on the gross amount before discount (over-collection).

It should be noted that dealers who charge tax on the gross amount before discount over allowances, and/or trade-ins, collect excess tax (over-collection) since tax is being charged on an amount (discount, etc.) which is not part of gross receipts. When such instances are noted, include the excess tax in the audit unless the dealer has given a refund of the excess tax to its customers. This will be accomplished by picking up the excess tax collection amount as “Excess tax collected” on the auditor’s report.

Employees who work at auto plants may be entitled to a discount on purchases of new vehicles from the manufacturer who employs them. When a car dealer sells a new car to the manufacturer's employee (customer), the dealer may sell the vehicle at a predetermined price (a reduced price from what they would normally charge a customer). The dealer then bills the manufacturer separately for the amount of the predetermined discount the dealer gave the employee. The manufacturer then reimburses the dealer for the discount given by the dealer to the employee. The dealer would owe Retailers' Occupation Tax on the amount of the purchase price they receive from the manufacturer as well as on the amount they received from the employee (See OGDEN CHRYSLER PLYMOUTH, INC. V. BOWER, 348 Ill. App.3d 944 (2nd Dist. 2004)). 86 Ill. Adm. Code 130.2125.

With regard to the above position on discounts OR cash back to the dealer programs, the employee, or any other customer for that matter, need not even be aware of the discount or cash back to the dealer for the discount or cash back to be taxable. The payments the dealer received from Chrysler were tied to a specific sale. If discounts or cash back to the dealer are not tied to a specific sale, the discounts or cash back to the dealer are nontaxable.

Automobile manufacturer rebates are treated in the same manner as other rebates. They are taxable to the dealer if they are used as part of the consideration for the sale and not taxable if the customer keeps the rebate and does not apply it to the purchase of the automobile.

If an automobile dealer accepts a manufacturer's rebate provided by a customer as part of the payment for the retail sale of an automobile or other type of vehicle, the amount of the reimbursement or payment paid by the manufacturer to the dealer is part of the taxable gross receipts received by the dealer for the sale of that automobile or other type of vehicle. 86 Ill. Adm. Code 130.2125(e).

Example - Taxable – customer applies rebate amount to purchase price:

An automobile manufacturer offers a $1,000 rebate to purchasers of certain automobiles at or near the end of a model year. The dealer sells one of the qualifying vehicles to a customer for $30,000. The customer has the option of receiving the payment from the manufacturer for the rebate or assigning the rebate to the purchase price of the vehicle. The customer chooses to apply the $1,000 rebate amount to the purchase price of the vehicle. Since the dealer will receive a payment from the manufacturer of $1,000 and $29,000 from the customer, the taxable gross receipts received by the dealer for this sale are $30,000.

Example - Not taxable – customer does not apply rebate amount to purchase price:

An automobile manufacturer offers a $1,000 rebate to purchasers of certain automobiles at or near the end of a model year. The dealer sells one of the qualifying vehicles to a customer for $30,000. The customer has the option of receiving the payment from the manufacturer for the rebate or assigning the rebate to the purchase price of the vehicle. The customer does not choose to apply the $1,000 rebate amount to the purchase price of the vehicle and instead chooses to keep the amount of the rebate. Since the dealer will receive $30,000 from the customer and no payment from the manufacturer, the taxable gross receipts received by the dealer for this sale are $30,000.

For more information, refer to the section on Rebates in Sales Tax Audit Manual Chapter 11.

The taxation of automobile dealer incentives will depend upon whether the dealer receives a payment that is conditioned upon the retail sale of an automobile from a source other than the purchaser.

Beginning July 1, 2008, the taxation of the other automobile dealer incentives will depend upon whether the incentive is provided to the dealer solely for the sale of the vehicle or is conditioned on additional sales or other service standards or goals. Incentives provided by manufacturers that are conditioned on additional sales or are conditioned on meeting certain manufacturer required marketing standards, facility standards, or sales and service department satisfaction goals would not be subject to tax. 86 Ill. Adm. Code 130.2125(f).

Automobile Dealer Incentive Examples:

1. Taxable incentive payments - payment conditioned on the retail sale – Dealer Cash:

   If an automobile dealer receives a payment as an incentive for the retail sale of an automobile, the amount of that reimbursement or payment is part of the taxable gross receipts received by the dealer for the sale of that automobile.

   Example - An automobile manufacturer offers a dealer incentive (sometimes referred to as "dealer cash") of $1,000 for each of a specific type of automobile sold to a retail customer during the month of March. An automobile dealer sells that type of vehicle to a retail customer for $38,000 during the month of March. The retail sale of that vehicle qualifies the dealer for the manufacturer's dealer incentive payment of $1,000 for the retail sale of that vehicle. The purchaser pays the dealer $38,000 and the dealer receives $1,000 from the manufacturer. Since the $1,000 payment is conditioned only upon the sale of that vehicle and is not conditioned upon the sale of any other vehicle or vehicles, the taxable gross receipts received by the dealer for this sale are $39,000.

2. Nontaxable incentive payments - payment conditioned on the retail sale, but only after a certain number of sales have been made:

   The payment is not part of the taxable gross receipts from a retail sale if, at the time of the retail sale, the payment is contingent on the dealer making or having made any additional retail sales.

   Example - An automobile manufacturer offers a dealer incentive payment (sometimes referred to as "dealer cash") of $1,000 for each of a specific type of automobile sold to a retail customer in the month of March, but only if the dealer sells at least 15 of that type of vehicle during that month. An automobile dealer sells that type of vehicle to retail customer for $38,000 on March 25th. The dealer had sold 14 of that type of vehicle earlier that month and the sale on March 25th qualified the dealer for the $1,000 manufacturer payment on that sale and each of the 14 previous sales. The gross receipts from the sale on March 25th is $38,000 and the $1,000 manufacturer's payment is not part of the dealer's gross receipts from that sale. In addition, the $14,000 payment to the dealer for the sales of the previous 14 vehicles was contingent upon the sale of other vehicles and is not part of the gross receipts from the sales of those vehicles. If the dealer sold a vehicle on March 26th and qualified for another $1,000 manufacturer

payment for that sale, the $1,000 manufacturer payment would not be part of the dealer's gross receipts from that sale.

3. Non-taxable dealer hold-backs - payment not conditioned on the retail sale:

   If a dealer receives payment in exchange for the purchase of an automobile from a supplier or manufacturer, and that payment is not conditioned upon the sale of that automobile to a retail consumer, the amount of that payment is not part of the taxable gross receipts received by the dealer for the retail sale of that automobile.

   Example - A manufacturer provides dealer hold-back payments to its automobile dealers of 3% of the invoice price of each vehicle purchased from that manufacturer. The dealer hold-back payments are paid to the dealer on a quarterly basis regardless of whether that dealer has sold at retail one or more of the vehicles it had purchased that quarter. The dealer purchases a vehicle from the manufacturer at the beginning of the month for an invoice price of $39,000 and then sells that vehicle 10 days later at retail for $40,000. The manufacturer of that vehicle pays an amount to the dealer of $1,170 (3% of the invoice price of $39,000) at the end of the quarter as a dealer hold-back for that vehicle. Since the $1,170 hold-back payment to the dealer from the manufacturer is conditioned only on the purchase of the vehicle from the manufacturer (not on the subsequent retail sale of the vehicle), the taxable gross receipts received by the dealer for this sale are only $40,000.

4. Non-taxable - payment not conditioned on the retail sale:

   The determination of taxability under the provisions of this paragraph is not dependent on whether the retailer is required to lower the selling price of the vehicle as a condition for receiving the incentive payment.

   Example - An automobile dealer normally offers a specific type of vehicle for retail sale for $40,000. The manufacturer of that vehicle agreed to pay an incentive to the dealer of $3,000 for each of that type of vehicle that the dealer purchased for resale from the manufacturer during a specified promotional period. After purchasing the vehicle during the qualifying period, the dealer offered the vehicle for sale at a reduced or discounted price of $37,000. A retail purchaser agrees to purchase the vehicle for $37,000. Since the $3,000 incentive provided to the dealer from the manufacturer is conditioned only on the dealer's purchase of the vehicle from the manufacturer (not on the subsequent retail sale of the vehicle), the taxable gross receipts received by the dealer for this sale are $37,000.

5. Non-taxable performance bonus payments OR Non-taxable marketing or facility incentive payments:

   A dealer incentive or bonus contingent on the dealer meeting certain manufacturer required marketing standards, facility standards, or sales and service department satisfaction goals, is not part of the taxable gross receipts from a retail sale, even if the incentive or bonus is calculated using a flat amount per vehicle, gross receipts or Manufacturer's Suggested Retail Price (MSRP) of vehicles sold by that dealer.

Example - Non-taxable performance bonus payments: An automobile manufacturer establishes a performance bonus program for automobile dealers who obtain a certain customer service index (CSI) score that demonstrates a substantial degree of satisfaction from their sales and service customers. Upon meeting such requirement, the automobile dealer will receive an incentive payment from the manufacturer calculated as 2% of the MSRP of the vehicles sold by that dealer during the incentive period. Because the bonus is contingent on the dealer meeting certain customer satisfaction goals as indicated by the CSI score, the manufacturer's performance bonus would not be part of the gross receipts received by that dealer for the sales of those vehicles.

Example - Non-taxable marketing or facility incentive payments: An automobile manufacturer creates an incentive program for automobile dealers who meet certain marketing standards or facility standards designed to increase sales and brand loyalty. Upon meeting such standards, the automobile dealer will receive an incentive payment from the manufacturer calculated as a flat amount of $500 per vehicle sold by the dealer during the incentive period. Because the incentive is contingent on the dealer meeting certain marketing or facility standards set by the manufacturer, the $500 incentive payments would not be part of the gross receipts received by that dealer for the sales of those vehicles.

Since retailers of motor vehicles, watercraft, trailers, and aircraft do not pay Retailers' Occupation Tax to the Department on those retail sales with monthly returns but remit the tax to the Department on a transaction-by-transaction basis using the ST-556 series of forms, they are unable to take a deduction on the returns they file with the Department. Instead, they are allowed to file a claim for credit with the Department. The ST-557, Claim for Credit for Repossession of Motor Vehicles, Watercraft, Aircraft, Trailers, and Mobile Homes, allows dealers to claim a credit for taxes paid on multiple bad debt transactions on one form. Like with sales reported on the ST-1, these claims can only be filed once the debt is written-off on a Federal income tax return. The statute of limitations also runs from the federal income tax return date.

The retailer is entitled to a bad debt credit with respect to the original sale in which the default has occurred to the extent to which it has paid ROT on a portion of the price that the retailer does not collect, or that the retailer is not permitted to retain because of being required to make a repayment of that portion to a lending agency under a "with recourse" agreement. The amount that can be deducted as a bad debt from a dealer's taxable receipts is the amount claimed as a bad debt deduction in the books and records and filed on the federal return. If it is not clearly stated on the bad debt line, the dealer has to show the auditor where the bad debt from their records are located on the return. However, in the limited situation in which a cash basis retailer has prepaid the tax, such retailer is allowed to claim a bad debt deduction if the debt (i) has been found to be worthless or uncollectible and (ii) would be eligible to be both charged off in the retailer's books and records and claimed as a deduction under the IRS Code if the retailer had kept their accounts on an accrual basis.

A repossession may result when dealers carry their own paper or the dealers have a written "with recourse" agreement with a finance company for financing the unpaid balance. The pay-off of the loan is predicated on a legal recourse the lender has against the dealer rather than a courtesy provided by the dealer to the lender. (In the latter case, the dealer is merely acquiring additional inventory and NOT reducing receipts from sales.)

When a dealer repossesses an item the dealer self-financed, the dealer would be entitled to a repossession credit for the tax on the unpaid balance of the finance contract. When a dealer repossesses an item they originally financed but sold the finance contract to a finance company (or similar entity), the dealer would be entitled to a repossession credit for the tax on the unpaid balance of the finance contract only if certain conditions are met. A dealer may claim this credit only when the dealer financed the item under a "with-recourse" agreement. A "with-recourse" agreement is one under which the dealer guaranteed and is required to make total repayment to the finance company. To apply for this credit, the dealer must file Form ST-557, Claim for Credit for Repossession of Motor Vehicles, Watercraft, Aircraft, Trailers, and Mobile Homes. The statute of limitations is as follows: If a claim for credit is filed between January 1 and June 30, a dealer may file for a credit for tax paid on the unpaid balance on vehicles repossessed during the current year and the previous 36 months. Beginning July 1, a dealer may file

for a credit for tax paid on the unpaid balance on vehicles repossessed during the current year and the previous 30 months only.

When a bank or other type of lending institution sells an item they repossessed, the transaction is a retail sale, and the gross receipts received from the sale are subject to sales tax. These institutions must report the sale of these items on Form ST-556. If the bank or lending agency applies for title to the repossessed item in their name and then sells the item to a new buyer, a sale occurs and tax is due either on Form ST-556 (if registered) or Form RUT-25. However, if the original owner, co-owner, or co-signer (of the loan) redeems (resumes) possession of the item, the transaction is not regarded as a sale and is not subject to tax.

If the bank or lending agency does not apply for title to the repossessed item in their name and reassigns the title to the new buyer, then tax is due on the applicable Form RUT-50 or Form RUT-75 as a private transaction between the previous owner of the repossessed item and the new buyer.

A bad debt deduction can be taken when a portion of the selling price on which Retailers' Occupation Tax had been paid becomes uncollectible and is actually charged off on the dealer's books for Federal Income Tax purposes. The dealer may account for this loss by reducing sales on the ST-1 by the amount written off on the Federal Return in the month the Federal Return was filed.

Amounts received from collection agencies will not necessarily include the total recoveries. Any amounts retained by the collection agency should be added to the recorded recoveries as it is an expense of collection (cost of doing business) and not exempt from tax.

The fair market value of repossessed property is not factored into a bad debt calculation.

Per 86 Ill. Adm. Code 150.705(c), Special mobile equipment means:

> *"Every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: Ditch digging apparatus, well boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditches, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carryalls and scrapers, power shovels and drag lines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.* [625 ILCS 5/1-191]"

Mobile equipment such as trucks, trailers, railroad cars, and other forms of moving vehicles purchased by someone who is not an interstate carrier for hire, or who does not lease such equipment to an interstate carrier for hire, would be subject to tax.

Mobile equipment used in Illinois would be subject to the Illinois Use Tax. Consideration should be given to the depreciation for prior out-of-state use before the mobile equipment is used in Illinois. The same is true regarding credit for sales or use tax properly paid in another state.

Effective **August 16, 2013, Public Act 98-0425** amended Section 3-3 of the Uniform Penalty and Interest Act (UPIA) to impose a $100 penalty for failure to file by the required due date a transaction reporting return required by Section 3 of the Retailers' Occupation Tax Act and Section 9 of the Use Tax Act. 35 ILCS 735/3-3(a-15).

Effective **August 10, 2015, Public Act 99-0335** amended Section 3-3 again to limit the $100 penalty to returns where no tax is due:

> "(a-15) A penalty of $100 shall be imposed for failure to file a transaction reporting return required by Section 3 of the Retailers' Occupation Tax Act and Section 9 of the Use Tax Act on or before the date a return is required to be filed; **provided, however, that this penalty shall be imposed only if the return when properly prepared and filed would not result in the imposition of a tax. If such a transaction reporting return would result in the imposition of a tax when properly prepared and filed, then that return is subject to the provisions of subsection (a-10).**"

Subsection (a-10) imposes the standard late file penalty equal to 2% of the tax required to be shown due on a return (up to a maximum amount of $250).

The change implemented by PA 99-0335 is not retroactive. This results in two different sets of implementation rules depending on the date the return was due:

August 16, 2013, through August 9, 2015

For transaction returns due from August 16, 2013, through August 9, 2015, the $100 nonfiling penalty applies to all late filed and non-filed ST-556 and ST-556-LSE returns regardless of any tax liability due. The standard 2% late filing penalty (up to $250) also applies to any tax due.

August 10, 2015, and Forward

For transaction returns due on and after August 10, 2015, the $100 nonfiling penalty applies only to late filed and non-filed ST-556 and ST-556-LSE returns where no tax is due. If tax is due, only the standard 2% late filing penalty (up to $250) applies.

Late payment penalties are not affected by either Act.

12.25.1 Overview

A “leased vehicle” is a vehicle obtained from a lessor for longer than one year. A *lessee* is a person, firm or corporation that has the legal possession and control of a vehicle owned by another under the terms of a lease agreement. A *lessor* is a person, firm or corporation, which under the terms of a lease, grants the legal right of possession and control of and responsibility for the operation of the vehicle to another person, firm or corporation.

Many new car dealers are engaged in leasing vehicles to the general public; the leasing operation may or may not be a separate entity from the dealership.

- When the dealership and leasing operation are a common entity, attention to claims for trade-ins of vehicles retired from the lease operations should be noted. Since dealers cannot sell to themselves (in fact, they are withdrawing vehicles from inventory for lease), they cannot trade to themselves either.
- When the dealership and leasing operation are separate entities, care should be taken in examination of trade-ins of retired vehicles it is possible the same trade-in was claimed on more than one ST-556-LSE.

12.25.2 Interim Use Exclusion (Leased Vehicles)

The leasing of tangible personal property by persons who are primarily engaged in the business of selling such property at retail is within the interim use exclusion if such property is available for sale during the lease period. The interim use exclusion is not available to persons who purchase tangible personal property with the intent to engage in the business of leasing such property and who sell such property only as an incident to their leasing activity. The period of use or lease by the retailer must be less than 24 months. Refer to 86 Ill. Adm. Code 150.306(a)(1)(B) for additional requirements.

Additionally, items sold to a lessor or removed from inventory for leasing purposes are subject to either sales or use tax. This is true because the lessor is the “user” of the item rather than the lessee, as previously stated.

12.25.3 “Selling Price” an a Leased Vehicle

For Illinois sales tax purposes, lessors (e.g., vehicle leasing companies) of titled or registered items are deemed end users of the property to be leased. As end users of titled or registered items located in Illinois, lessors owe Use Tax on the selling price of such property. The State of Illinois imposes no tax on the lease receipts. Consequently, lessees (e.g., lease customers) incur no tax liability.

Under Illinois law, lessors under long-term leases may not “pass through” their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements. As noted, however, these are private contractual agreements.

Public Act 98-628 (as amended by Public Act 98-1080) expanded the definition of "selling price" in the Retailers' Occupation Tax Act to provide that, beginning on January 1, 2015, only with respect to first division motor vehicles and certain second division motor vehicles that are sold to a lessor and simultaneously leased in the same transaction for a defined period that is longer than one year, "selling price" means "the consideration received by the lessor pursuant to the lease contract." See 35 ILCS 120/1. Public Act 98-628 did not change who the Retailers' Occupation Tax or the Use Tax is imposed upon (Retailers' Occupation Tax imposed on sellers; Use Tax imposed on purchasers (lessors); no tax imposed on lessees) or that the tax is measured by the selling price. It simply changed how the selling price is determined for these transactions. (See ST-9-LSE A Guide for Reporting Sales Using FORM ST-556-LSE, Transaction Return for Leases)

The selling price for leased motor vehicles is determined in one of two ways:

- the actual amount paid by the purchaser (lessor) to the seller of the vehicle ("actual selling price"), or
- the amount due at lease signing, plus the total amount of payments over the term of the lease ("alternate selling price").

The "actual selling price" includes amounts for accessories, federal excise taxes, freight and labor, documentary fees, and any rebates or incentives for which a dealer is reimbursed from any source. In general, any cost passed on to the customer as part of the sale of an item and for which gross receipts are received should be included in the actual selling price (See FY 2015-03). In other words, the "actual selling price" of the vehicle for calculating sales tax is the actual amount, minus trade-in credit, that the dealership charges to the leasing company to purchase the vehicle.

The "alternate selling price" must be used when a qualifying motor vehicle is sold for the purpose of being leased under a fixed-term lease contract for a period of more than one year. Qualifying motor vehicles are

- first division motor vehicles; and
- second division motor vehicles that are
    - self-contained motor vehicles 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;
    - motor vehicles of a van configuration designed to transport not less than 7 and not more than 16 passengers; and
    - motor vehicles having a gross vehicle weight rating (GVWR) of 8,000 pounds or less.

In lease sales transactions, the person selling the motor vehicle, (i.e., a motor vehicle dealership) owes Retailers' Occupation Tax. The person purchasing the motor vehicle (i.e., the leasing company) owes Use Tax. It is customary, however, for vehicle lease contracts to require lessees ("lease customers") to reimburse any sales taxes owed. If this reimbursement of tax is included in the lease contract, then, under the statute, it becomes part of the selling price subject to tax. In addition, if the lease contract includes finance charges on the tax reimbursement, these finance charges also become part of the selling price subject to tax. It is important to remember, in these transactions, the tax is based on the amount due under the lease contract. So, whatever amounts are included in the

lease contract become part of the "selling price" on which tax must be calculated. (See Compliance Alert August 2019)

Note: If the retailer is a leasing company *selling* such an item at the end of a lease, they should file Form ST-556, Sales Tax Transaction Return, rather than Form ST-556-LSE.

12.25.4 Non-Taxable Vehicle Sales (Leased Vehicles)

In the following instances, the lessor does not need to pay Use Tax on an item to be used for leasing purposes:

A. The lessee will title or register the item in another state. ("Out-of-State Resident") (See 86 Ill. Adm. Code 150.310(a)(1))
   - Special Considerations: Illinois law does not provide for the use of an out-of-state license plate or registration or the use of a drive-away permit as authority to exempt from tax the receipts from sales of watercraft, aircraft, or manufactured (mobile) homes when a nonresident purchaser takes possession or delivery of these items in Illinois. Sales of watercraft are taxable, even when sold as part of a boat/trailer package.

B. The lessor will lease a ready-mix concrete truck to a lessee who will use the item primarily in the manufacture of tangible personal property to be sold at retail. (See 86 Ill. Adm. Code 130.330(h)(2)E))
   - Special Considerations: Only ready-mix concrete trucks qualify for the MM&E exemption, and they only qualify when used primarily in the manufacture of tangible personal property for wholesale or retail sale or lease. No other type of item, including concrete pumper trucks, qualifies, and primary use of a ready-mix concrete truck for something other than the manufacture of tangible personal property for wholesale or retail sale or lease will disqualify the ready-mix concrete truck.

C. The lessor will lease the item to a governmental body with an active Illinois tax exemption "E" number. (See 86 Ill. Adm. Code 130.2080(b))
   - Note: The sale of an item to a lessor who will lease the item to any exempt organization other than a governmental body is taxable.

D. The lessor will lease the item to a lessee who will use the item as rolling stock. (See 86 Ill. Adm. Code 130.340(a))
   - Note: It is not only the item's type that determines whether the item qualifies for use as rolling stock, but also how the item is used by a qualifying interstate carrier.

E. Other Types of Exemptions include but are not limited to:
   i. The lessor will lease the item to a lessee who will use the item primarily in production agriculture. (See 86 Ill. Adm. Code 130.305(h) and (n))
      - Special Considerations: The farm machinery and equipment exemption apply only to items of farm machinery and equipment, either new or used, certified by the purchaser to be used primarily for production agriculture. The exemption excludes most motor vehicles required to be registered pursuant to the Illinois

Vehicle Code. Registered vehicles other than motor vehicles may qualify for the exemption if they are used primarily in production agriculture rather than used in transportation (e.g., transporting livestock to slaughter or crops) or other nonexempt activities.

- Note: ATVs may qualify for the farm machinery and equipment exemption if they are used primarily (e.g., more than 50% of the time) in production agriculture activities, such as pulling sprayers while they apply chemicals to fields or collecting and mapping soil samples. The use of ATVs for farm transportation or recreation purposes does not constitute production agriculture.

ii. The lessor will lease the item to a lessee and have it delivered outside of Illinois/ delivered outside of the United States (See 86 Ill. Adm. Code 130.605(d) and (g))

- Sales for lease of items that the lessor delivers or cause to be delivered to a customer in another state are exempt from tax as sales for lease in interstate commerce. Additionally, sales for lease of items delivered to a freight forwarder who will arrange for the item to be delivered outside the United States are exempt from tax as sales in foreign commerce.

iii. The lessor will lease the item to a lessee and issue an Aircraft Fly Away (See 86 Ill. Adm. Code 130.120(oo))

- Sales for lease of aircraft that will not be registered or based in Illinois after the sale for lease are exempt from tax, provided the aircraft leaves this State within 15 days after the later of either the final billing for the sale for lease of the aircraft or the approval for return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection.

iv. Warranty Replacements

- The replacement of a titled or registered item as a condition of a warranty agreement is exempt from tax because no additional sale for lease has taken place.

12.25.5 Trade-in Credit (Leased Vehicles)

With the implementation of Public Act 98-628, beginning January 1, 2015, lessors are required to use the “alternate selling price” on qualifying motor vehicles (see 12.26.3 “Selling Price” On A Leased Vehicle) and the “actual selling price” on motor vehicles that do not qualify. However, trade-in credits are different depending on which “selling price” is used on the transaction return.

Actual Selling Price - Qualified trade-in credits may only be applied on the transaction return if the lessor has used the actual selling price on the item to calculate the tax liability. The same rules outlined in Section 12.5.5 apply to these transactions.

Alternate Selling Price - No trade-in credits are allowed on lease transaction returns when the alternate selling price is used. However, the lessor may accept a traded-in vehicle from their lease customer as part of the transaction, but they cannot deduct the value of the traded-in vehicle from the selling price of the leased item when calculating the tax due. An example has been provided in

Informational Bulletin FY 2015-03. Additionally, when using the alternate selling price, credit for tax paid on a previously leased motor vehicle cannot be used against the tax liability when it is sold at the end of the lease and the taxable location and rate used on the original return is the same as the location and rate used on the LSE-1 for the corresponding transaction.

12.25.6 Additional Reportable Amounts (Leased Vehicles)

Illinois law provides that when a qualifying motor vehicle is sold for lease and will be titled or registered in Illinois, in addition to amounts reported on the original Form RUT-25-LSE or Form ST-556-LSE, the selling price of the vehicle includes any amount received by the lessor from the lessee that is not calculated at the time the lease is executed, including, but not limited to, excess mileage charges and charges for excess wear and tear. This amount also includes monthly lease payments if these payments were not included in the original selling price (e.g., lease payments made when the lease is extended beyond its original term). The law also provides that the lessor assumes the responsibility of the retailer for reporting and paying the tax due on this additional amount. These amounts are reported on Form LSE-1.

The ROT Discovery section of the Audit Bureau performs limited scope audits on various vehicle sales and purchases by individuals or non-vehicle dealer entities. These audits are considered to be transactional based audits. When audit liabilities are established, the ROT Discovery auditors use the following audit tax reports to process the assessment.

12.26.1 EDA-95 - Audit Version of the RUT-25

The EDA-95, Auditor Prepared Motor Vehicle Use Tax Report, is used to assess liabilities discovered during audits for amounts originally due on the RUT-25. The following table describes when a RUT-25 should have been prepared.

Used for purchases from	Type of Vehicles	Tax Rate
Out of State Dealer	Motor Vehicle (cars, trucks, vans, buses)	Varies by purchaser's location code
Lending Institution	Motorcycle	
Leasing Company Selling at Retail	Watercraft	**Date Due**
Unregistered Out of State Leasing Company leasing to IL resident	Aircraft	**30 days** from purchase date or date into Illinois, whichever is later
Any Retailer	Trailer	
In State Dealer not Registered	Motor Home	**Regulatory reference**
Excludes: Trucks purchased from a Leasing Company that is not also in business of selling vehicles. These are reported on the Private Party Vehicle Tax Transaction Return.	Mobile Home	Title 86: Revenue Part 150 - Use Tax
	Snowmobile	
	All-Terrain Vehicle (ATV)	

12.26.2 EDA-146 - Audit Version of the RUT-50

The EDA-146 Auditor-prepared Private Party Vehicle Tax Transaction Report is used for liabilities originally due on RUT-50 Private Party Vehicle Use Tax Returns. The following table describes when a RUT-50 should have been prepared.

Used for purchases from	Type of Vehicles	Tax Rate
An individual	Motor Vehicle (cars, trucks, vans, buses)	Varies by purchaser's location code
A company not in the business of selling them	Motorcycle	
Received as a gift or transfer from a Private Party	Motor Home	**Date Due**
Trucks purchased from a Leasing Company that is not also in business of selling vehicles	All-Terrain Vehicle (ATV)	**30 days** from purchase date or date into Illinois, whichever is later
	Excludes Trailers	
	Excludes Aircraft	**Regulatory reference**
	Excludes Mobile Homes	Title 86: Revenue Part 151 - Vehicle Use Tax
	Excludes Snowmobile	RUT-5, Private Party Vehicle Use Tax Chart
	Excludes Watercraft	
		RUT-6, Form RUT-50 Reference Guide

12.26.3 EDA-128 - Audit Version of the RUT-75

The EDA-128, Auditor Prepared Aircraft/ Watercraft Use Tax Report, is used to assess liabilities discovered during audits for amounts originally due on the RUT-75. The following table describes when a RUT-75 should have been prepared.

assess

Used for purchases from	Type of Vehicles	Tax Rate
An Individual	Airplanes	6.25%
A company not in the business of selling them	Helicopters	
Received as a gift or transfer from a Private Party	Hot-Air Balloons	**Date Due**
	Gliders	**30 days** from purchase date or date into Illinois, whichever is later
	Blimps	
	Dirigibles	**Regulatory reference**
	Seaplanes	Title 86: Revenue Part 152 - Aircraft Use Tax
	Watercraft	Title 86: Revenue Part 153 - Watercraft Use Tax
	Any other Aircraft defined in Section 3 of the Illinois Aeronautics Act	
	Excludes Class A canoes	
	Excludes Class A kayaks	
	Excludes Class 1 Watercraft	

12.27.1 Overview

Automobile Renting Occupation and Use Tax Act [35 ILCS 155] *imposes a tax upon persons engaged in this State in the business of renting automobiles in Illinois under lease terms of one year or less at the rate* of *5% of the gross receipts from such business* (See 35 ILCS 155/3; 35 ILCS 155/4). The Automobile Renting Occupation Tax, 86 Ill. Adm. Code 180.101(a), rate is based on the location where the automobile is rented while the Automobile Renting Use Tax, 86 Ill. Adm. Code 190.101(a), rate is based on the location where the automobile is registered. Many municipal and county governments have imposed a local auto renting tax of 1 percent. Although allowed, currently neither the Regional Transportation Authority (RTA) or Metro-East Transit District (MED) has imposed a tax. Currently, the Metropolitan Pier and Exposition Authority is the only special district imposing such a tax. 70 ILCS 210/13(d).

> *"Automobile" means any motor vehicle of the first division that is used for automobile renting, as defined in the Act, or a motor vehicle of the second division that is used for automobile renting, as defined in the Act, and which 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; 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, beginning January 1, 2014, has a Gross Vehicle Weight Rating, as defined in Section 1-124.5 of the Illinois Vehicle Code, of 8,000 pounds or less.* (Section 2 of the Act) This includes motorcycles and motor driven cycles. (See 86 Ill. Adm. Code 180.101(b))
>
> **NOTE:** Until December 31, 2013, pickup trucks are not subject to Automobile Renting Occupation Tax because they were not considered a second division motor vehicle. However, beginning January 1, 2014, pick-up trucks are subject to tax only if they are one of the types of second division motor vehicles listed in 86 Ill. Adm. Code 180.101(b)(2)(B).
>
> **NOTE:** Sport Utility Vehicles (SUVs) may be registered either as a first division or second division vehicle. When registered as a first division vehicle, the rental of an SUV is subject to Automobile Renting Occupation Tax. Until December 31, 2013, when registered as a second division vehicle, the rental of an SUV was not subject to Automobile Renting Occupation Tax. Beginning January 1, 2014, if an SUV is registered as a second division motor vehicle, it is subject to tax only if it is one of the types of second division motor vehicles listed in 86 Ill. Adm. Code 180.101(b)(2)(B).

The Act defines “rentee” as “any user to whom the possession, or the right to possession, of an automobile is transferred for a valuable consideration for a period of one year or less ....” See 35 ILCS 155/2. The rentor must remit to the Department, the Automobile Renting Use Tax collected, but first reduces that amount by the Automobile Renting Occupation Tax (if any) which is required to be paid and is paid to the Department in connection with the same automobile rental transaction. See 86 Ill. Adm. Code 190.115(b).

12.27.2 Gross Receipts (ART)

"Gross receipts" from the renting of tangible personal property or "rent," means all consideration received by a rentor as the rental price for the rental of automobiles under lease terms of one year or less. See 86 Ill. Adm. Code 180.120 and 180.125. The Act defines "renting" as "any transfer of the possession or right to possession of an automobile to a user for a valuable consideration for a period of one year or less." 35 ILCS 155/2. Certain charges are not subject to tax and are listed in Section 180.125 of the Department's regulations.

Gross receipts on which ART must be computed do not include certain separately stated charges added to rentees' billings, such as receipts from rentees in consideration of waivers of claims for loss or damage to automobiles rented or receipts from any other separately stated charges which are not for the use of the tangible personal property. See 86 Ill. Adm. Code 180.125(a).

The following automobile rentals are exempt from tax:

- Automobiles rented for more than one year
- Receipts received by automobile dealers from a manufacturer or service contract provider for the use of "loaner" vehicles while the dealer is making a warranty or service contract repair on the person's vehicle
- Vehicles rented by exempt organizations who provide a copy of the organization's active Illinois exemption number issued by the department. The exemption number begins with the letter "E" and is followed by 10 digits (e.g., E 9999-9999-01).

12.27.3 Marketplace Facilitator (ART)

The Automobile Renting Occupation and Use Tax Act incorporates the Sections of the Retailers' Occupation Tax Act related to marketplace facilitators. For general information regarding Marketplace Facilitators, review Sales Tax Audit Manual Chapter 7, Remote Retailers and Leveling The Playing Field. House Bill 1497 has provided that peer-to-peer car sharing and car sharing programs will not be subject to Automobile Renting Occupation and Use Tax. At the time of this publication, HB1497 was pending Governor signature but is expected to become law.

12.27.4 Local Automobile Renting Occupation and Use Taxes

Counties, municipalities, certain mass transportation districts, and the Metropolitan Pier and Exposition Authority (MPEA) are allowed to impose automobile renting occupation and use taxes. If imposed, the Department collects the taxes for these local governments and returns the collections to them. The following statutory list reflects the local automobile renting occupation and use taxes collected:

- County Automobile Renting Occupation Tax 55 ILCS 5/5-1032
- County Automobile Renting Use Tax 55 ILCS 5/5-1033
- Metro-East Mass Transit District (MED) Automobile Renting Occupation Tax 70 ILCS 3610/5.02
- Metro-East Mass Transit District (MED) Automobile Renting Use Tax 70 ILCS 3610/5.02
- Metropolitan Pier and Exposition Authority (MPEA) Automobile Renting Occupation Tax 70 ILCS 210/13(d)

- Metropolitan Pier and Exposition Authority (MPEA) Automobile Renting Use Tax 70 ILCS 210/13(e)
- Municipal Automobile Renting Occupation Tax 65 ILCS 5/8-11-7
- Municipal Automobile Renting Use Tax 65 ILCS 5/8-11-8
- Regional Transportation Authority (RTA) Automobile Renting Occupation Tax 70 ILCS 3615/4.03.1

12.28.1 Overview

On July 1, 1992, the Environmental Protection Act (415 ILCS 5/55.8 through 5/55.10) was amended to provide dedicated funding for used tire disposal and cleanup programs through the establishment of the Tire User Fee which is collected from retail customers. The fee is deposited into the Used Tire Management Fund which is administrated by the Illinois Environmental Protection Agency.

The Illinois EPA's role in the management of used and waste tires in Illinois is two phased. First, the Agency acts as a regulatory agency. Illinois EPA regulates the generators, transporters, processors, and end users of waste tires to ensure all are operating in compliance with applicable statutes and regulations. Second, the Illinois EPA operates a cleanup program to remove waste tires from dump sites.

Any person or entity who sells or delivers tires at retail in Illinois is required to collect a fee of $2.50 per new or used tire sold and delivered in this State from retail customers. The fee is added to the selling price of the tire; however, it is not included in the gross receipts of the retailer for retailers' occupation tax purposes.

The Tire User Fee is not for "recycling" the tires. It is a fee that is imposed when a qualifying tire is sold at retail in Illinois.

Publication 118, Tire User Fee, is available on the Department's website for the public regarding the requirements for collecting the Tire User Fee.

12.28.2 Tires Subject to the Fee

Any person who sells or delivers tires at retail in Illinois must collect the fee, unless they pay the fee to a retail supplier who is registered for the Tire User Fee and who has agreed to collect and pay the fee on their behalf. The Tire User Fee is imposed on new and used tires for:

- tires for vehicles in which persons or property may be transported or drawn upon a highway, as defined in the Illinois Vehicle Code, Section 1-217;
- aircraft;
- special mobile equipment (such as street sweepers, road construction and maintenance machinery); and
- implements of husbandry (farm wagons and combines).

12.28.3 Tires Excluded from the Fee

The following exemptions are allowed:

- Tires that are placed on a vehicle that is not transported or drawn upon a highway (e.g., race cars, fork lifts, all-terrain vehicles, and lawn and garden tractors).
- Reprocessed tires (a used tire that has been recapped, retreaded, or regrooved and that has not been placed on a vehicle wheel rim).

NOTE: Used tires sold at retail that have not been "reprocessed" are subject to the fee.

12.28.4 Retail Sales Exempt from the Fee

Only the following retail sales are exempt from the Tire User Fee:

- tires sold as part of a vehicle sale
- tires sold through mail order
- tires sold at wholesale or for resale
- tires that are not delivered in Illinois

These tire sales must be reported in the total number of tires sold on Line 1 of Form ST-8, Tire User Fee, but are deductible on Line 2.

Note: Certain retail sales that are exempt from sales tax are subject to the Tire User Fee. Purchasers who are exempt from sales tax (e.g., government agencies, schools, and charitable or religious organizations) are not exempt from paying the fee.

Any person or entity that makes retail sales of new or used tires must be registered with the Illinois Department of Revenue for sales and use tax. This includes tire stores, department stores, implement dealers, auto salvage yards, marketplace facilitators making sales on their own behalf, marketplace sellers, remote retailers, auto repairmen and servicemen (including de minimis servicemen) who make retail sales of tires delivered to an Illinois destination.

In addition to being registered for sales and use tax, these taxpayers must also be registered *for the Tire User Fee. For every sale which is subject to the Tire User Fee, the taxpayer is responsible* for collecting and remitting the tire user fee ($2.50 per new or used tire) by submitting the Form ST-8 Tire User Fee Return to the Illinois Department of Revenue.

Form ST-8, Tire User Fee Return must be filed quarterly on or before:

- April 20 for the first quarter (January-February-March),
- July 20 for the second quarter (April-May-June),
- October 20 for the third quarter (July-August-September), and
- January 20 of the following year for the fourth quarter (October-November-December).

Tire retailers are required to keep books and records in accordance with sections 86 Ill. 86 Ill. Adm. Code 130.801 through 130.815. The types of records available to an auditor will depend on the size and complexity of the business under audit. A large department store chain will have computerized records likely requiring Computer Assisted Auditing procedures; whereas an auto repair serviceman may only have some type of shop ticket showing sales and service charges.

On and after **January 1, 2018,** tire retailers and suppliers are required to file their returns electronically via MyTax Illinois. Tire retailers and suppliers who demonstrate they do not have access to the Internet or demonstrate hardship in filing electronically may petition the Department to waive the electronic filing requirement.

If the tire retailer pays the fee to a retail supplier who is registered for the Tire User Fee and who agrees to collect and pay the fee, the tire retailer does not have to register with the Department for the tire user fee. Instead of filing the ST-8, Tire User Fee return, retailers of tires may remit the tire user fee to their suppliers if the suppliers are registered retailers of tires and agree or otherwise arrange to collect and remit the tire user fee to the Department of Revenue. A tire supplier who enters into such an arrangement with a tire retailer shall be liable for the tax on all tires sold to the tire retailer and must:

- provide the tire retailer with a receipt that separately reflects the tire user fee collected from the retailer on each transaction and

- accept used tires for recycling from the retailer's customers. The tire supplier shall be entitled to the collection allowance of 10 cents per tire, but only if the return is timely filed and only for the amount that is paid timely. The retailer of the tires must maintain in its books and records evidence that the appropriate fee was paid to the tire supplier and that the tire supplier has agreed to remit the fee to the Department of Revenue for each tire sold by the retailer. Otherwise, the tire retailer shall be directly liable for the fee on all tires sold at retail. Tire

retailers paying the fee to their suppliers are not entitled to the collection allowance of 10 cents per tire.

Retailers are required to accept used tires for recycling from their customers up to the number of tires purchased. Retailers collect the fee from the purchaser by adding the fee to the selling price of the tire. The fee must be stated as a distinct item separate and apart from the selling price of the tire. The tire retailer must provide the customer with a receipt that separately states the tire user fee. The fee is not includable in the gross receipts of the retailer subject to the Retailers' Occupation Tax Act, the Use Tax Act or any locally imposed retailers' occupation tax.

Performing an audit on the Tire User Fee is no different than performing any other audit. Invoices or other relevant documents are reviewed to determine if there are any taxable exceptions. Please refer to Chapter 6, Audit Procedures, for general auditing procedures.

Key items to be aware of:

- Total tire sales may include both tires subject to the tax and those not subject to the tax. Verify that all tire sales are included in the totals.

- Some tire retailers collect the Tire User Fee on all tires that they sell, including tires which are not subject to the fee. Verify that all fees collected on exempt tires were remitted because the fee is stated as a separate item on the invoice. If the retailer doesn't remit all of the fees collected, this is unjust enrichment. The difference would be assessed as excess tax collected.

- Verify that tire sales to tax exempt organizations include the tire user fee. The actual sale is exempt from Retailers' Occupation Tax but the tire user fee must be collected. Retailers may count the entire transaction as exempt. Purchasers such as government agencies, schools, and charitable organizations who are exempt from paying sales tax are not exempt from the Tire User Fee.

- Verify that the Tire User Fee is collected on the sale of used tires. Publication 118, Tire User Fee; FY 2005-03 - Tire User Fee Information

- If a tire retailer has an SKU for the tire fee, the auditor can get the amount of tire fee and the number of times the SKU was rang up. By having both numbers, the auditor can determine if the retailer is collecting enough Tire User Fees from their customers. The auditor can then determine if the retailer reported dollars from their accrual account and then backed into the number of tires sold on their ST-8 return.

- Actual invoices still need to be looked at to determine if the tire retailer is collecting the Tire User Fee on all of the tires subject to the fee.

- A tire retailer who enters into an agreement to have the supplier remit the fee to the Department is still required to collect the fee from their customers. This can make it appear as if the tire retailer is over-collecting the fee. This is especially true if they have an agreement with some, but not all of their suppliers. When doing a Schedule 5 reconciliation, the tire retailer must be given credit for the fees paid to their supplier.

- There may be timing differences between when the tire retailer pays the fee to their supplier and when they sell the tires and collect the fee from their customers. This can make it a challenge to achieve a perfect reconciliation, but the differences are usually immaterial.

12.31.1 Salvage Yard Sales of Used Tires

Used tires given away with only charges for labor in removing the used tires from the wheels of salvaged vehicles are considered sales at retail. Some salvage companies will only charge a service fee for removing used tires off the rims of salvage vehicles.

Customers are not purchasing services from that business; they are purchasing used tires. The gross receipts from these sales remain subject to tax under the Retailers' Occupation Tax Act. Whatever labor costs incurred in obtaining the used tires, including removing them from the wheels of salvaged vehicles, are costs of doing business and are not deductible from gross receipts. The Tire User fee is due on the sale of these tires.

12.31.2 Sales of Tires by De Minimis Automobile Repair Serviceman

When a de minimis serviceman sells tires as a regular part of their business, the sale of tires is a sale at retail and subject to the Retailers' Occupation Tax Act. The sale of other automobile repair services would be a sale of services subject to the Service Occupation Tax Act on the transfer of any tangible personal property incident to the sale of services.

86 Ill. Adm. Code 130.2015 (a)(1)(C) and (b)(1) state that persons who service or repair tangible personal property are liable for Retailers' Occupation Tax when accessories (with or without installation) are sold to purchasers for use or consumption and that tires are considered as an accessory.

Therefore, the de minimis serviceman must be registered for and file the ST-1 Sales and Use Tax and E911 Surcharge Return. They also must be registered for and file the ST-8 Tire User Fee form unless the fee is paid to all the suppliers of the tires.

12.31.3 Occasional Sale of Tires by an Individual

If a sale of tires is not subject to Retailers' Occupation Tax because it qualifies as an *occasional sale*, it is also *not subject* to the Tire User Fee. For example, the Tire User Fee is not applicable when an individual not in the business of selling tires sells a set of tires to another individual.

A marketplace is a location held out to the public as being habitually engaged in the selling of tangible personal property. As such, no sales made on a marketplace are considered occasional sales. This means the sale of a set of tires made over a marketplace by a marketplace seller will not be considered an occasional sale. In this case, the marketplace facilitator would be liable for the Retailers' Occupation Tax for the sale of the tires and the marketplace seller would be liable for the Tire User Fee on this transaction.

12.31.4 Occasional Tire Sales by Automotive Serviceman

If a sale is subject to Retailers' Occupation Tax, the Tire User Fee applies even if the retailer only occasionally sells tires.

For instance, when an automotive serviceman who doesn't carry an inventory of tires or offer tires for sale, but occasionally procures tires from a distributor and resells the tires to a customer who has requested that worn tires be replaced, the serviceman is still acting as a retailer. That sale is a retail sale subject to both the Retailers' Occupation Tax and the Tire User Fee.

Therefore, the serviceman must be registered for and file the ST-1 Sales and Use Tax and E911 Surcharge Return. They also must be registered for and file the ST-8 Tire User Fee return unless the fee is paid to all the suppliers of the tires.

12.31.5 Used Tires Donated, No Tire User Fee Collected

Occasionally, some retailers or servicemen treat the Tire User Fee as a disposal fee and don't charge their customers the fee because the used tires are donated to a tire retreading or tire recycling company.

The Tire User Fee is collected on the retail sale of new or used tires. The actual disposal or donation of the old used tires has no bearing on collection of the Tire User Fee imposed.

12.31.6 Tire Retreaders; No Tire User Fee Collected

Tires sold by retreading companies are subject to Retailers' Occupation Tax and Use Tax liability when the retreaded tires are owned by the retreading company. Tires that have been reprocessed (retreaded) are not subject to the Tire User Fee. Retreading of tires belonging to their customers by retreading companies are considered service situations rather than retail sale situations and are also not subject to the Tire User Fee.

12.31.7 Additional Tire Disposal/Recycling Fees

When a tire retailer charges a separately stated fee for disposal/recycling of the old tires in addition to the separately stated Tire User Fee, this additional tire disposal/recycling fee is a cost of doing business and must be included in the gross receipts. If the retailer combines the extra fee and the Tire User Fee and shows one total for the Tire User Fee on the invoice, the amount above $2.50 per tire would be considered excess fee collected.

12.31.8 Tire User Fee Included in Sales Tax Line

If the retailer does not separately state the Tire User Fee on the invoice and combines the Tire User Fee with other sales tax charged, it would appear that excess sales tax has been collected. This will require the taxpayer to demonstrate to an auditor that the fee had been collected and paid and that the sales tax has not been over collected. If the taxpayer cannot document and prove that the Tire User Fee had been collected and paid, then this could result in excess sales tax collections and an assessment for the Tire User Fee.

12.32.1 Manufacturer's Warranty

When tires are replaced, free of charge, under the original manufacturer's warranty that is included in the selling price of the tires, the Tire User Fee is not applicable. The replacement of tires under the manufacturer's warranty is not considered a retail sale.

If the manufacturer's warranty only provides a credit based on the proration of the amount of useful tread remaining on the tire and the customer has to pay the difference for the replacement tire, it is a retail sale subject to the Tire User Fee.

12.32.2 Extended Warranty

Extended warranties (optional warranties) are contracts purchased by the customer to provide repairs or replacement for tires for a stated period of time or usage after a manufacturer's express warranty has expired.

There are many variations of road hazard extended warranties. Some provide for replacement of the tire at no cost to the customer, others might provide for a proration based on useful tread remaining creating a credit towards the purchase of the replacement tire, while others might refund the original purchase amount which then can be used to purchase the replacement tire.

Regardless of the type of road hazard extended warranty, any time the customer has to pay anything towards the purchase of the replacement tire, a retail sale has occurred and the Tire User Fee is applicable.

12.32.3 Tire Exchanges/Swaps/Trade-Ins

If an old tire is traded in on new tires which are being purchased, a retail situation exists and the Tire User Fee is due.

A retail sale occurs when a swap is made between a customer and a retailer (the gross receipts are reduced, however, by the value of the swap received) and the Tire User Fee is applicable.

12.33.1 Tire Purchased for Leased Vehicles

Lessors purchasing cars for lease are not subject to the Tire User Fee, whether the lease is a true lease or not. However, if a lessor under a true lease buys replacement tires for a leased vehicle, they are subject to the Tire User Fee, because lessors under true leases are the ""end users"" and are not buying for resale purposes.

Lessors of motor vehicles under conditional sales leases that purchase tires for a leased car can claim the resale exemption and the Tire User fee is not applicable.

12.33.2 Leasing of Tires

Major tire manufacturers like Michelin, Goodyear and Bridgestone offer fleet tire leasing services where entities such as trucking companies can lease tires instead of purchasing them. Payment is based on mileage driven.

There are several financial advantages to leasing tires. The first is cash flow. Fleet owners only pay for the accumulated mileage on the tires. Leasing requires no initial outlay or expenditure since the tires enter into service without initially hitting the balance sheet.

This absence of upfront costs is often the most significant draw to leasing. Trip revenues match the expenses. The vehicles earn revenue as they run and accrue mileage, paying the mileage expense according to the contract, making the costs of tires and tire maintenance more predictable, while reducing the financial risk of potential fluctuations in tire costs.

There are no retail sales so the Tire User Fee is not applicable in this type of true lease arrangement.

However, if a tire retailer provides this type of financing arrangement and the tires will belong to the lessee at the end of the contract, this would be considered a retail sale subject to the Tire User Fee.