Compliance Alert

STATE OF Illinois
DEPARTMENT OF REVENUE

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Compliance Problem

We have determined that a number of All Terrain Vehicle (ATV) dealers are not correctly charging sales tax when they sell these vehicles. Specifically:

- Dealers are issuing drive-away permits and not charging tax to out-of-state buyers of ATVs when possession of the vehicle is taken in Illinois. This also applies to motor bikes that may not be licensed for use on public roadways.
- Dealers are reporting that they delivered ATVs out of state and not charging sales tax when the purchaser actually picked up the ATV in Illinois.
- Dealers are accepting farm machinery and equipment exemptions for ATVs not primarily used in production agriculture.
- Dealers are not completing Form ST-556, Sales Tax Transaction Return, as is required with the sale of any ATV.

Solution

1. Dealers should review the Form ST-556 instructions and appropriately charge sales tax.
2. If a dealer has not filed the Form ST-556, it should be filed as soon as possible. If the Form ST-556 has already been filed reporting an incorrect amount of sales tax, Form ST-556-X, Amended Sales Tax Transaction Return, should be filed showing the proper sales tax due.
3. To help dealers comply with the law, we have the following guidance:

   - Drive-away permits

     Review Illinois regulation 86 Ill. Adm. Code 130.605 (b). ATVs are not eligible for issuance of drive-away permits. Sales tax must be charged when an out-of-state customer takes delivery of an ATV at an Illinois dealership.

- Out-of-state sales

  Review Illinois regulation 86 Ill. Adm. Code 130.605 (d) - (g). Illinois tax is due if the ATV is picked up in Illinois. For the interstate commerce exemption to apply, the seller must be obligated under the terms of agreement with the purchaser to make physical delivery of the ATV from Illinois to a point outside Illinois, not to be returned to Illinois. The seller must maintain documentation that delivery was actually made as required.

- Farm machinery and equipment exemption

  Review Illinois regulation 86 Ill. Adm. Code 130.305. ATVs do not generally qualify because the exemption does not extend to general farm transportation or recreation. However, if the ATV is used more than 50 percent of the time in production agriculture (raising of livestock, crops, seed stock, animal husbandry, floriculture, aquaculture, horticulture, and viticulture to produce products that will be sold), it would qualify for the farm machinery and equipment exemption.

  Qualifying use includes collecting soil samples, mapping fields, applying farm chemicals, transporting seeds to fields, and hauling livestock or livestock necessities, such as medication, feed, and water.

  Qualifying use does not include scouting crops, checking fences, tile mapping, herding livestock, checking livestock, hauling debris, traveling to inaccessible areas, or transporting tools, persons, or equipment to repair fences and mow fence rows or ditches.

Background

The department has been monitoring ATV sales and has found widespread noncompliance and confusion about the taxability of ATVs. The department will continue to enforce the sales tax law and collect tax, penalties, and interest when we identify noncompliance. Dealers should review this Compliance Alert, together with the sources identified above to assure they are properly collecting tax.

Did you know?

The Illinois Department of Revenue has an information sharing agreement with adjoining states to ensure Illinois residents who purchase ATVs from out-of-state dealers file the required RUT-25, Use Tax Transaction Return, within 30 days of the date the ATV is brought into Illinois.