

In order to properly take a trade-in deduction, the item being traded-in must be of like kind and character as that which is being sold. See 86 Ill. Adm. Code 130.425. (This is a GIL.)

August 11, 2010

Dear Xxxxx:

This letter is in response to your letter dated June 14, 2010, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter is to request a formal written opinion on the taxability of exchanging gaming hardware and software (i.e. XBox gaming systems and games) and using that exchange towards the purchase of new gaming hardware or software. The sales scenario is as follows:

The customer would bring us their used piece of gaming software or hardware which we would value. That dollar value would then be applied towards the purchase of a new piece of gaming hardware or software (see the examples below).

**SCENARIO 1**

New XBOX 360 System     \$499.00

Used XBOX                     -\$100.00

Amount owed by customer \$399.00

**SCENARIO 2**

New XBOX 360 Game     \$50.00

Used XBOX game value   -\$15.00

Amount owed by customer \$35.00

Illinois Department of Revenue Regulations section 130.101 imposes a tax on the sale of tangible personal property:

The Retailers' Occupation Tax Act (the Act) [35 ILCS 120] imposes a tax upon person engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business.

Illinois Department of Revenue Regulations section 130.425(d) provides (regarding the taxability of trade-ins):

(d) The real test is whether the retail sale of the traded-in tangible personal property by the person who accepts it in trade would be subject to the Retailers' Occupation Tax, or whether such sale would be exempt as an isolated or occasional sale. In the former event, the tangible personal property qualifies for the trade-in exemption. In the latter event, it does not."

Illinois Department of Revenue section 130.425(e) further provides:

(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale, where the item that is traded-in is of like kind and character as that which is being sold, shall not be considered to be 'gross receipts' subject to the Retailers' Occupation Tax and need not be included in the seller's return, or may be deducted in the return from gross receipts if included in gross receipts as reported in the return.

Based on the law cited above, it is our understanding that sales tax would be computed on the amount *after* the discount is taken (\$399.00 and \$35.00 in the scenarios above).

We respectfully request your assistance in confirming the accuracy of our analysis.

## **DEPARTMENT'S RESPONSE:**

Although we cannot give you a specific answer in the form of a General Information Letter, we hope you find the following helpful.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See 86 Ill. Adm. Code 130.101 which can be found on the Department's website. "Gross receipts" are considered to mean all the consideration actually received by the seller, except traded-in tangible personal property. See 86 Ill. Adm. Code 130.401 and 130.425 which can also be found on the Department's website. The tangible personal property must be taken by the seller in trade as all or part of the consideration for a sale. See Section 130.425(e).

No specific certification is required to document a trade-in. However, the retailer must maintain sufficient books and records to document such trade-ins. A purchaser may trade-in more than one item toward the purchase of another item or items from a retailer. Please note, though, that the item or items to be traded-in must be of like kind and character as that which is being sold. See Section 130.425.

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

Very truly yours,

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