

Sections 130.425 and 130.455 of the Department's Administrative Rules governing the Retailers' Occupation Tax Act contain no requirement that the traded-in tangible personal property had to be originally purchased in this State or that the original purchase was subject to Retailers' Occupation Tax or Use Tax liability. See 86 Ill. Adm. Code 130.425 and 130.455. (This is a GIL.)

September 30, 2010

Dear Xxxxx:

This letter is in response to your letter dated February 24, 2010, in which you requested a Private Letter Ruling. 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 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:

COMPANY respectfully requests a Private Letter Ruling from the Department of Revenue regarding the treatment of Illinois trade-in credit for the Retailers [sic] Occupation Tax pursuant to 2 Ill. Adm. Code 1200.

The questions upon which we seek clarification from the Department of Revenue relates to the Illinois trade-in credit available to offset the purchase price of replacement motor vehicles. The issues are whether (1) the trade-in motor vehicle must be titled in Illinois at the time of the trade-in and (2) the trade-in vehicle must have been originally purchased in Illinois and subject to Illinois Retailers [sic] Occupation Tax or Use Tax on the original purchase (and therefore whether the Illinois ST-556 filed at the time of purchase must be retained to evidence the tax paid on the original purchase of the trade-in vehicle) and (3) for transactions described in (2) above, if they originated in a state other than Illinois with a differing tax requirement (i.e. reduced tax requirement or no sales tax requirement), would such facts alter or allow the utilization of the trade credit and (4) the tax credit can be utilized retroactively pending the outcome of this ruling request.

1. STATEMENT OF ACTS

COMPANY provides retail financing, leasing and dealer financing to vehicle dealers and their customers within the United States and Commonwealth of Puerto Rico. Additionally, COMPANY offers financing of various industrial and commercial products such as forklifts and light and medium-duty trucks to equipment dealers and their customers.

COMPANY currently does not utilize motor vehicles titled in states other than Illinois at the time of trade-in for the trade-in credit program. Additionally, COMPANY does not utilize motor vehicles that were originally purchased in states other than Illinois for the trade-in credit program either.

Neither the rule concerning traded-in property nor the rule concerning trade-in allowances limit the allowance of credit for trade-ins to motor vehicles that are titled in Illinois at the time of the trade-in. Nor do these provisions require that the trade-in vehicle has to have been originally purchased in Illinois and subject to Illinois Retailers' Occupation Tax or Use Tax on the original purchase in order to qualify for the credit. See 86 Ill. Adm. Code 130.425 and 130.455.

2. DOCUMENTS RELEVANT TO THE REQUEST

N/A

3. TAX PERIOD, AUDIT/LITIGATION STATUS

Tax period at issue is for all open periods within statute and for future periods for determined treatment of the tax credit.

COMPANY is not currently under audit or in litigation with the Department of Revenue regarding Retailers [sic] Occupation Tax or Use Tax.

4. PREVIOUS RULING

The Department has not previously ruled on this issue for COMPANY.

5. STATEMENT OF AUTHORITIES

Illinois Compiled Statutes Chapter 35 Sections 105/2 and 120/1 state that for both Retailers' Occupation tax [sic] and Use tax [sic] purposes, 'selling price' subject to tax is defined as 'the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including 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, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever.' Nothing in the statute requires that the vehicle traded-in be originally purchased in Illinois or that the vehicle traded-in be titled in Illinois at the time of the trade.

Illinois Administrative Code Title 86 Section 130.425 (e) states '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.'

Illinois Administrative Code Title 86 Section 130.455(c) states that:

- 1) 'A dealer may reduce his gross receipts by the value of or credit given for a traded-in motor vehicle where:
 - A) An individual trades a motor vehicle he owns on the purchase of a new or used motor vehicle;
 - B) A lessor trades a motor vehicle he owns on the purchase of a new or used motor vehicle for subsequent lease;
 - C) A lessor or other purchaser trades a motor vehicle owned by a prospective lessee or a third party where 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
 - D) A motor vehicle is traded-in as described in subsection (c)(1)(B) or (c)(1)(C) of this Section, and the dealer executes the lease but assigns the lease to a purchasing lessor, if the following requirements are part of the transaction:
 - i) the lease agreement states that the lease and vehicle will be assigned to the lessor making the trade of the motor vehicle, and
 - ii) 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.
- 2) A dealer may not reduce his gross receipts by the value of or credit given for a traded-in motor vehicle where:
 - A) The dealer is the owner (meaning the dealer holds either title or certificate of origin) of the traded-in motor vehicle;

- B) 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 in subsection (d) of this Section; or
- C) The party holding title and offering the vehicle or vehicles for trade on behalf of another purchaser or lessor, as described in subsection (c)(1)(C) of this Section, would not be entitled to the isolated or occasional sale exemption if such vehicle or vehicles were sold by that party, rather than traded.

There are no restrictions or limitations in the regulations that require that the vehicle traded-in be originally purchased in Illinois. Similarly the law does not state that the trade-in vehicle must be titled in Illinois at the time of the trade.

Illinois Administrative Code Title 86 Section 130.425(d) provides that the person taking the vehicle in trade must be a retailer of motor vehicles and a trade-in credit cannot be given if the retail sale by the person who accepts the vehicle in trade will be exempt as an occasional or isolated sale. These restrictions appear to indicate that the purpose of the trade-in credit is to avoid the imposition of tax twice on the sale of the trade-in vehicle. It appears it is not intended to be a credit for the tax paid on the original purchase of the traded-in vehicle and therefore, even if the vehicle was originally purchased exempt, the trade-in credit would still apply.

6. STATEMENT OF CONTRARY AUTHORITIES

Unable to locate contrary authorities

7. TRADE SECRET

No trade secret information is being requested to be deleted from the publicly disseminated version of the private letter ruling.

8. SIGNATURE

Required signature below

We respectfully thank you for your time and consideration and await your response. If you require additional information or have questions please contact INDIVIDUAL.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department has decided to decline your request for a PLR and respond instead with a GIL.

As you have noted in your letter, Sections 130.425 and 130.455 of the Department's Administrative Rules governing the Retailers' Occupation Tax Act contain no requirement that the traded-in tangible personal property had to be originally purchased in this State or that the original purchase was subject to Retailers' Occupation Tax or Use Tax liability. Tangible personal property that is of like kind and character may qualify as a trade-in regardless of whether any Illinois Retailers' Occupation Tax or Use Tax was incurred or paid on the original acquisition of that property.

In regards to the question regarding the trade-in of motor vehicles titled in other states, there is no requirement that the traded-in motor vehicle be titled or registered in this State at any time. The taxation or lack of taxation of the original purchase of the trade-in vehicle, whether such original purchase occurred in this State or any other location, has no impact on whether that vehicle can be used as a trade-in in this State.

In regards to the question about whether a trade-in can be used retroactively, there are generally two types of trade-ins recognized in this State for sales tax purposes. The first type of trade-in is the traditional "simultaneous trade-in" whereby the trade-in and retail sale occurs at the same time. If no trade-in was taken at the time of the transaction, then the transaction cannot later be changed to create a trade-in for sales tax purposes. Subsection (e) of Section 130.455 regarding vehicle trade-ins specifically provides that:

"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. The appropriate sales or use tax return cannot be amended to reflect the *value of or credit given* for a vehicle offered for trade subsequent to the completion of the sales transaction." 86 Ill. Adm. Code 130.455(e).

The second type of trade-in regarding vehicles is the "advance trade-in" created by Section 130.455(d) of the Department's Administrative Rules. 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 (emphasis added). 86 Ill. Adm. Code 130.455(d). As provided in subsection (d)(3) of Section 130.455, documentation evidencing an advance trade-in transaction must include the following: 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; the bill of sale for the traded-in vehicle; and 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)(3).

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

Very truly yours,

Terry D. Charlton
Senior Counsel, Sales & Excise Taxes

TDC:msk