

Note: This letter was revoked by Private Letter Ruling ST 12-0009-PLR.

This letter concerns advance trade-in transactions by a lessor of motor vehicles. See 86 Ill. Adm. Code 130.455. (This is a PLR).

June 14, 2012

Dear:

This letter is in response to your letter dated April 27, 2012, which supersedes your letter dated October 27, 2011, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to BANK, FEIN X, ("BANK") for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither BANK. ("BANK") nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of our client, BANK ('BANK'), we respectfully request the Illinois Department of Revenue (the 'Department') to issue a Private Letter Ruling ('PLR') pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

BANK is a National Banking Association organized and operated under the National Bank Act. Effective MONTH1 X, 20XX, via a Merger Agreement and Consent of Shareholders, a copy of which is enclosed with this letter, a wholly owned subsidiary of BANK known as COMPANY1 (the 'Company') merged with and into BANK (the 'Merger'). As described in more detail below, as a result of the Merger, BANK acquired all assets and assumed all liabilities of the Company.

The Company was a financial lender that provided motor vehicle lease financing arrangements to automotive dealerships. At the time of the Merger, the Company had developed a program to participate in the Illinois Retailers' Occupation Tax advance trade-in credit available for motor vehicles under 86 Ill. Admin. Code Sec. 130.455. BANK respectfully requests this private letter ruling to approve the operation of the program, which it will operate as successor in interest to the Company.

General Information

1. Enclosed please find an original Form IL-2848, Power of Attorney, authorizing COMPANY2 to represent BANK before the Department.
2. This PLR is not requested with regard to hypothetical or alternative proposed transactions. This PLR is requested to determine the Retailers' Occupation Tax consequences of the actual business practices of BANK.
3. Neither the Company nor BANK is currently engaged in litigation with the Department in regard to this or any other tax matter.
4. The Company is not currently under audit by the Department in regard to this issue. BANK is currently under audit by the Department for sales/use tax purposes for the period MONTH2 X, 20XX through MONTH3, 20XX.
5. To the best of BANK's knowledge, the Department has not previously ruled regarding this matter for the Company or BANK. In addition, neither the Company nor BANK has submitted the same or similar issue to the Department.
6. BANK requests that certain information be deleted from the PLR prior to dissemination to others. BANK requests that its name, together with the name of Company, their addresses, date of statutory merger, names of their private label clients and name of their representative be deleted.
7. BANK requests that the PLR be issued for all tax periods after September 2011.
8. Enclosed please find a copy of a sample advance trade-in contract agreement, which BANK will use in participating in the Illinois advance trade-in credit for motor vehicles.
9. BANK is unaware of any authority contrary to the authorities referred to and cited below.

Statement of Material Facts

1. By a Merger Agreement and Consent of Shareholder effective MONTH1 X, 20XX, the Company merged with and into BANK, with BANK being the surviving entity. Under federal banking law and regulations, BANK acquired all the assets and assumed all the liabilities of the Company upon the Company's merger with and into BANK. The Merger Agreement provides, in relevant part:

1.04. Properties of Continuing Association. At the Effective Time [MONTHY1, X, 20XX], all property, real, personal and mixed, and all debts on whatever account and all other choses in action and all and every other interest, of or belonging to, or due to, the Merged Entity [the Company] shall be taken and deemed to be transferred to and vested in the Continuing Association [BANK] without further act or deed, and the title to all real estate, or any

interest therein, under the laws of Delaware or any other state or of the United States, vested in the Merged Entity shall vest in the Continuing Association. The Merged Entity shall execute all such instruments of transfer, if any, as shall be necessary under the law to vest all the right, title and interest of the Merged Entity in and to its assets in the Continuing Association.

1.05. Liabilities of the Continuing Association. The Continuing Association at and after the Effective Time shall be responsible and liable for and assume all of the liabilities, deposits, contracts and obligations of the Merged Entity in the same manner and to the same extent as if the Continuing Association had itself incurred the same or contracted therefore, ...

2. As a result of the Merger, BANK owns and is responsible for all the assets, rights, privileges, immunities, franchises, liabilities and obligations of its merged subsidiary, the Company. All motor vehicles previously owned by the Company, although not retitled from the Company's name, are now owned by BANK.
3. BANK provides operating leases to end-user customers who wish to lease select motor vehicles from automotive dealerships affiliated with at least one of BANK's private label clients (the 'Dealers'). Private label clients refer to automotive companies which exclusively do business with BANK. Our private label clients are manufacturers who utilize BANK for the subvented retail and lease business. These manufacturers only offer these manufacturer retail and lease subvented programs through BANK and not through other lenders. BANK does not enter into any lease financing arrangements involving any automotive label or dealers not affiliated with at least one of its private label clients.
4. BANK executes its operating lease agreements by purchasing the motor vehicle selected by the end-user customer from a Dealer and then such Dealer leases the motor vehicle to the end-user customer. Thus, BANK becomes the legal owner of the motor vehicle and retains title to the motor vehicle while the end-user customer maintains control of the car. At the end of the lease term, BANK may dispose of its off-lease motor vehicle by selling it to the end-user customer, selling it to a Dealer for resale, trading it in to a Dealer for the residual amount on the lease contract plus any related fees, or auctioning it off to any dealership at fair market value.
5. BANK will dispose of its off-lease motor vehicles through physical and online dealer auction sales. Online auction sales may occur during any time of the day, including times outside normal business hours and bank holidays.
6. As part of its off-lease motor vehicle disposal process, BANK will periodically engage in an advance trade-in transaction with a Dealer to trade in an off-lease motor vehicle that it owns, for the purchase of a replacement vehicle from the same Dealer to lease to end-user customers. Accordingly, BANK will enter into

advance trade-in credit agreements with Dealers in the course of direct purchase/sale transactions, and physical and online auction sales.

7. BANK will participate in the Illinois sales/use tax advance trade-in credit by offering the opportunity to participate in the credit program exclusively with Illinois-licensed automotive dealerships affiliated with at least one of BANK's private label clients.
8. In a direct purchase/sale transaction, BANK will enter into a contract agreement to trade in off-lease motor vehicles to a Dealer and to purchase replacement motor vehicles from the same Dealer. After trading in its off-lease motor vehicles to the Dealer, BANK will complete its contractual obligation by purchasing replacement motor vehicles for lease from the same Dealer within a specified amount of time not exceeding nine (9) months after the trade-in date.
9. In an auction sale, BANK will offer numerous motor vehicles for online or physical auction as a disclosed principal to any automotive label or dealer. As part of the auction sale offer of an off-lease motor vehicle, BANK will also offer to become contractually obligated to purchase another motor vehicle from the same winning bidder within nine (9) months or less of the auction sale date. However, BANK desires to make this offer for contractual obligation only to bidders who are BANK's private label clients or Dealers. If, at the time of the completion of the auction sale, the winning bidder accepts BANK's offer, BANK will be contractually obligated to purchase a replacement vehicle from the same winning bidder. Subsequently, BANK will complete its contractual obligation by purchasing replacement motor vehicles from the same winning bidder. At its discretion, BANK may choose not to purchase replacement motor vehicles from the winning bidder and would, in that event, surrender its right to the related sales/use tax advance trade-in credit.
10. Under both the ordinary purchase/sales transaction and auction sale situations, BANK will execute the documentation required by Illinois to qualify for the advance trade-in credit. BANK's advance trade-in contract agreements will include the value or credit given for the traded-in vehicle, the obligation to purchase a replacement vehicle, and the date of expiration of the advance trade-in credit. In addition, the bill of sale for the traded-in vehicle will be prepared and proper Illinois sales/use tax returns will be filed to evidence the qualified trade-in transaction, subsequent purchase of a replacement vehicle and application of the advance trade-in credit.

Rulings Requested

On behalf of BANK, we respectfully request the Illinois Department of Revenue to rule on the following:

1. If BANK offers to enter into an Illinois advance trade-in credit agreement only with auction bidders who are dealerships affiliated with at least one of BANK's private label clients, does it still qualify for the Illinois advance trade-in credit?
2. Whether BANK is required to retitle the motor vehicles originally titled in the Company's name, but acquired by BANK pursuant to the Merger, or whether BANK may evidence its ownership of the motor vehicles by an alternative means completing Form ST-556 by (1) completing the Buyer's Name and Signature fields as BANK formerly known as COMPANY1' or (2) attaching a document to Form ST-556 indicating the name of the prior entity (i.e., the Company), and the name of the surviving entity (i.e. BANK), and stating that the change in business structure is due to a statutory merger, in order to use the motor vehicles to earn the advanced trade-in credit.

Relevant Authorities

Illinois imposes a Retailers' Occupation Tax ('ROT') at the rate of 6.25% on the gross receipts of persons for the privilege of, 'selling at retail tangible personal property.' 35 Ill. Comp. Stat. 120/1; 35 Ill. Comp. Stat. 120/2; 35 Ill. Comp. Stat. 120/2-10. The ROT applies to the 'business of selling tangible personal property at retail in this State whether such property is new or used and regardless of how the seller may have acquired such property.' 86 Ill. Admin. Code § 130.425(f).

The Illinois Retailers' Occupation [sic] Use Tax ('UT') is imposed on persons using or storing tangible personal property purchased at retail from a retailer and is based on the selling price or fair market value of tangible personal property purchased. 35 Ill. Comp. Stat. 105/3-10; 86 Ill. Adm. Code § 150.101(a - b).

Generally, sales and purchases of motor vehicles are subject to the Illinois ROT and UT including the sale of used motor vehicles by leasing or rental business. 86 Ill. Admin. Code § 130.111(a).

The 'gross receipts' from the sales at retail are defined as the 'total selling price or the amount of such sales.' 35 Ill. Comp Stat. 120/1. The 'selling price' or 'amount of sale' means the 'consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property' and 'services, but not including the value of or credit given' for traded-in tangible personal property of like kind and character. *Id.* The phrase 'like kind and character' is liberally construed to include the trading of 'any form of motor vehicle for any form of motor vehicle, or any kind of farm or agricultural implement for any other kind of farm or agricultural implement,' while 'not including a kind of item which, if sold at retail by that retailer, would be exempt from Retailer's [sic] Occupation Tax and Use tax as an isolated or occasional sale.' 35 Ill. Comp Stat. 120/1; 86 Ill. Admin. Code § 130.425(b).

Illinois provides a trade-in credit for the value of traded-in tangible personal property on the purchase of tangible personal property of like kind and character, which is

deductible from taxable gross receipts in determining the ROT. 86 Ill. Admin. Code §130.425(e).

For purposes of the trade-in credit:

. . . Dealer means any person engaged in the business of selling vehicles at retail.

Dealer Credit means an advance trade credit maintained on the books of the dealer where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade.

Lease means a true lease of a vehicle for a term of more than one year.

Lessee means any person that acquires possession of a vehicle pursuant to a lease.

Lessor means any person engaged in the business of leasing vehicles to other persons.

Purchaser means any person, whether an individual consumer or a lessor, that purchases a vehicle from a dealer. 86 Ill. Admin. Code §130.455(a).

A dealer may use the trade-in credit and 'reduce his gross receipts by the value of or credit given for a traded-in motor vehicle' in the following situations:

- 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. 86 Ill. Admin. Code §130.455(c)(1)(A) – D).

Illinois generally recognizes two types of trade-in transactions that qualify for the trade-in credit: (1) the 'simultaneous trade-in' and (2) the 'advance trade-in.' 86 Ill. Admin. Code §130.455(e). A simultaneous trade-in means a trade-in which is 'offered at the time of the sales transaction.' *Id.* Illinois does not permit deferred trade-ins 'subsequent to the completion of the sales transaction.' *Id.*

The 'advance trade-in' is a transaction in which '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.' 86 Ill. Admin. Code § 130.455(d). Advance trade-in credits are not transferrable and expire if not used within 9 months or less of the contract date. An advance trade-in credit may be granted to a purchaser in the 'form of dealer credit or cash, and will not affect the purchaser's ability to apply the advance trade credit toward the purchase of one or more vehicles, so long as the purchaser is contractually obligated to purchase a vehicle from the dealer within the time specified. In completing the transaction, the purchaser may pay the dealer cash or other consideration for the purchase price of a [replacement vehicle].' *Id.*

An advance trade-in credit 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 [replacement] 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. Admin. Code § 130.455(d)(3).

Additionally, the advance trade-in credit documentation 'need not specify the make, model or purchase price of a vehicle to be purchased, only that the purchaser is under an obligation to purchase [a replacement vehicle] within the specified amount of time.' 86 Ill. Admin. Code § 130.455(d)(1). Furthermore, the dealer and purchaser must retain the documentation and records supporting the use of a trade-in credit for a purchase transaction and furnish it to the Illinois Department of Revenue (the 'Department') upon inspection or audit. 86 Ill. Admin. Code § 130.455(g).

Advance trade-in credits generally are not available in auction situations. Ill. Private Letter Ruling ST 05-0008, Aug. 25, 2005. However, one exception exists 'when the seller of the motor vehicle at the time of the auction is a disclosed principal.' 86 Ill. Admin. Code § 130.1915(b). Specifically, advance trade-in credits are available in an auction setting when:

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 from the date of the auction sale; the winning bidder accepts the seller's offer and the seller becomes contractually bound to purchase another motor vehicle from that winning bidder within 9 months from the date of the auction sale; and all other requirements of Section 130.455(d) have been met. Ill. Dept. of Revenue Gen. Info. Ltr. ST 08-0120-GIL, Aug. 26, 2008.

A 'disclosed principal' is considered disclosed, 'when the name and address of such principal is made known to [the] purchaser at or before the time of the sale and when the name and address of the principal appears upon the books and records of the auctioneer or agent. A verbal announcement of the principals' names at the auction is not sufficient to document disclosure.' 86 Ill. Admin. Code § 130.1915(b). Other forms of sufficient disclosure include:

1. naming the principals and their addresses (city only is sufficient) in newspapers and other public advertising;
2. posting a written list of the principals' names and their addresses (city only is sufficient) at the auction site;
3. distributing sale bills or brochures that name the principals and their addresses (city only is sufficient);
4. recording the principals' names and their addresses (city only is sufficient) on legal documents regarding the item that is sold, such as automobile titles; or
5. other methods that provide a permanent, written record of the disclosure of the names and addresses (city only is sufficient) of the principals.

Id.

In Illinois, advance trade credits are not transferrable. 86 Ill. Admin Code § 130.455(d). In a prior general information letter, however, the Department has stated that 'a surviving or new corporation can use the advanced trade-in credits of the prior corporation as a matter of law' 'when a merger or consolidation as described in the Illinois Business Corporation Act takes place [and] . . . not . . . if any other type of reorganization or sale of assets occurs.' Ill. Dept. of Revenue Gen. Info. Ltr. ST 99-0241-GIL, Jul. 26, 1999.

When a merger, consolidation or exchange is effected according to the Illinois Business Corporation Act, 'the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.' 805 Ill. Comp. Stat. 5/11.50(a)(2). Moreover, a business reorganization effected [sic] pursuant to the Illinois Business Corporation Act states that the surviving entity succeeds to the following:

4. . . . all the rights, privileges, immunities and franchises, as of a public or a private nature, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares,

and all other choses in action and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated [and]. . .

5. . . . all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substitute in its place ... 805 Ill. Comp. Stat. 5/11.50(a)(4-5).

To like effect, under the National Bank Act and the regulations of the Office of the Comptroller of the Currency (the 'OCC'), 'the corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank, as set forth in 12 U.S.C. 215a(a), (e) and (f) in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a(a), as if the nonbank affiliate were a state bank.' 12 CFR Section 5.33(g)(4)(v). In a Private Letter Ruling issued by the Department in 2005, simultaneous trade-in credits arising from the trade-in of off-lease vehicles inherited by the surviving entity due to a merger were found eligible to reduce the sales tax base on replacement vehicles purchased by the third party so long as ownership of the motor vehicles was properly assigned by the surviving entity to the third party. Ill. Private Letter Ruling ST 05-0008, Aug. 25, 2005.

Discussion

BANK will qualify for the Illinois trade-in credit as a 'lessor [who] trades a motor vehicle he owns on the purchase of a new or used motor vehicle for subsequent lease.' 86 Ill. Admin. Code § 130.455(c)(1)(B).

For every advance trade-in credit transaction, the trading in of a vehicle will be identified as a trade-in transaction at the time of trade, evidenced in a contract agreement, bill of sale and reported as a qualified trade-in on the Form ST-556 Sales Tax Transaction Return. BANK's subsequent purchase of the replacement vehicle and use of the advance trade-in credit within nine (9) months of the trade-in date will also be reported on the appropriate Illinois sales/use tax return. As a result, BANK will be able to offset the selling price of the replacement vehicle with 'the value of or credit given for [the] traded-in vehicle' and the Dealer would be able to reduce his gross receipts by the same amount reported on his Illinois ROT return.' 86 Ill. Admin. Code § 130.455(c)(1).

BANK also will qualify for the Illinois advance trade-in credit by disclosing itself as a principal at the time of the auction by offering 'to become contractually bound to the [Dealer] to purchase another motor vehicle from the [same Dealer] within 9 months from the date of the auction sale' as part of the sale, and the [Dealer] accepts. Ill. Dept. of Revenue Gen. Info. Ltr. ST 08-0120-GIL, Aug. 26, 2008.

1. **Limitation on Parties Engaged to Enter Advance Trade-in Credit Agreements**

The Illinois advance trade-in credit does not need to be offered to all auction bidders to qualify for the tax credit so long as the Dealer who purchases the trade-in vehicle at the auction sales is the same Dealer from whom BANK is contractually bound to purchase a replacement vehicle within nine (9) months after the auction sale.

As mentioned above, BANK will only engage trade-in credit transactions with Illinois-licensed automotive dealerships affiliated with at least one of BANK's private label clients in both direct purchase/sale transactions and auction sales.

As discussed above, in order to qualify for the advance trade-in credit, Illinois only requires that: (1) 'at the time the vehicle is traded to the dealer, [BANK] becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advance trade-in transaction,' (2) the advance trade-in credit is used within the time specified and is not used 'subsequent to the 9 month period,' (3) the advance trade-in credit is not transferred, (4) the advance trade-in value of or credit given for the traded-in vehicle by the dealer to [BANK] is in the form of dealer credit or cash, (5) 'documentation and records evidencing a trade-in credit utilized for a [] transaction [is] retained by the dealer and [BANK],' (6) the documentation includes 'contract establishing the value of or credit given for [the] traded-in vehicle, the obligation to purchase a vehicle, and the date of expiration of the advance trade-in credit,' along with 'the bill of sale for the traded-in vehicle' from the auction sale, 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,' and (7) the advance trade-in transaction is not 'structured so that [BANK] is not the owner of the automobile offered for trade.' 86 Ill. Admin. Code § 130.455(d),(g).

In a Private Letter Ruling issued in 2005, the Department stated that:

[I]f the seller of the motor vehicle at the time of the auction is a disclosed principle [sic] . . . and that seller is contractually obligated to purchase another motor vehicle within 9 months from the purchaser of that motor vehicle, then the auctioned vehicle may be used by that seller as an advance trade-in on the purchase of another vehicle as long as all of the requirements of subsection (d) of Section 130.455 are met. Ill. Private Ltr. Ruling ST 05-0008-PLR, Aug. 25, 2005

In 2008, a general information letter published by the Department stated that a seller may earn an advance trade-in credit in an auction setting if the seller is a disclosed principal and makes the offer to enter into an advance trade-in credit agreement to all dealers. Ill. Dept. of Revenue Gen. Info. Ltr. ST 08-0120-GIL,

Aug. 26, 2008. Despite the Department's reference to the seller's offer to all dealers in this general information letter, there is no requirement for a seller to make the offer to engage in an advance trade-in credit agreement to all dealers under Illinois law or 86 Ill. Admin. Code § 130.455. As such, the reference to all dealers in the 2008 general information letter is not binding as long as all of the requirements of subsection (b) of Section 130.1915 and subsection (d) of Section 130.455 are met. Therefore, the Illinois advance trade-in credit need not be offered to all auction buyers in order for BANK to qualify for the credit as long as BANK is a disclosed principal and the Dealer who purchases the trade-in vehicle at the auction sales is the same Dealer from whom BANK is contractually bound to purchase a replacement vehicle within nine (9) months.

2. Trade-in Vehicles Titled in Prior Entity's Name But Owned by Surviving Entity of a Merger

BANK is not required to retitle the motor vehicles originally titled in the Company's name but acquired by BANK pursuant to the Merger and may evidence ownership for purposes of the advance trade-in credit by completing the Form ST-556 by (1) completing the Buyer's Name and Signature fields as 'BANK, formerly known as COMPANY1' or (2) attaching a document to Form ST-556 to indicate the name of the prior entity (i.e. the Company), the name of the surviving entity (i.e., BANK) and to state that the change in business structure is due to a statutory merger, in order to use the motor vehicles to earn the advance trade-in credit.

In a 1999 general information letter, the Department stated that a surviving entity was permitted to use the advanced trade-in credits of the prior entity subsequent to a 'merger or consolidation as described in the Illinois Business Corporation Act . . . [and not] if any other type of reorganization or sale of assets occurs.' Ill. Dept. of Revenue Gen. Info. Ltr. ST 99-0241-GIL, Jul. 26, 1999. The surviving entity succeeded to the ownership of the prior entity's assets and privileges including its unused advance trade-in credits.

Moreover, in a Private Letter Ruling issued by the Department in 2005, off-lease motor vehicles assumed by the surviving entity of a merger qualifying under Illinois Corporate law, were found eligible to be assigned to a third party and used to earn simultaneous trade-in credits to reduce the sales tax base on replacement vehicles purchased by the third party. Ill. Private Letter Ruling ST 05-0008, August 25, 2005. The Department stated that this arrangement is permissible so long as the surviving entity provides documentation that 'it (1) is the legal owner of the 'off-lease' motor vehicle; (2) assigns ownership of that vehicle to a motor vehicle dealer; and (3) provides written authorization to the dealer that specifies the vehicle being traded-in, that the trade-in is for the benefit of [the third party] and identifies the vehicle that [the third party] is purchasing.' *Id.* As the result of the merger, the surviving entity succeeded to ownership of the prior entity's off-lease motor vehicles and was recognized as the owner for Illinois trade-in credit purposes without retitling the motor vehicles. Therefore, if a

surviving entity of a qualifying Illinois statutory merger may assign its ownership of the prior entity's motor vehicles to a third party to engage in simultaneous trade-in transactions, the surviving entity should be able to use the motor vehicles to earn simultaneous and advance trade-in credits without retitling the motor vehicles.

In accordance with the reasoning expressed by the Department in ST 99-0241-GIL (Jul. 26, 1999) and ST 05-0008 GIL (Aug. 25, 2005), described above, vehicles originally titled in the Company's name, but acquired by BANK pursuant to the Merger, may participate in the BANK advanced trade-in credit program. The statutory merger of the Company into BANK occurred by operation of law pursuant to the National Bank Act, regulations issued by the OCC pursuant thereto and the Delaware General Corporation Law. Under the National Bank Act and OCC regulations, 'the corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank, as set forth in 12 U.S.C. 215a(a), (e) and (f) in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a(a), as if the nonbank affiliate were a state bank.' 12 CFR Section 5.33(g)(4)(v), implementing the powers granted to the OCC to permit mergers of a national bank's nonbank affiliates into such bank pursuant to 12 U.S.C. Section 215a-3; with regard to the authorization of the Company to engage in a merger with BANK, see Delaware General Corporation Law Section 1254. These provisions of federal and Delaware law have the same effect as the merger provisions of the Illinois Business Corporation Law, under which a valid merger, consolidation or exchange causes the 'surviving or new corporation [to possess] all of the rights, privileges, immunities, franchises, . . . all property, real, personal, and mixed, and all debts due on whatever account . . . and all of the liabilities and obligations of each of the corporations so merged or consolidated.' 805 Ill. Comp. Stat. 5/11.50(a)(4),(5). Therefore, due to the statutory merger, ownership and title of all the Company's assets and liabilities, including motor vehicles, leases of motor vehicles, and the contractual obligations to purchase replacement motor vehicles from Dealers, succeeded to the surviving entity, BANK.

In this case, although the Merger of the Company into BANK was effectuated under the laws of Delaware (where the Company was organized) and federal banking law (because BANK is a national bank), to the best of our knowledge, the effect of the merger of the Company into BANK was the same as that of a merger of an Illinois corporation into another entity and is not inconsistent with the Illinois Business Corporation Act. In engaging in advance trade-in credit agreements, BANK owns the off-lease motor vehicles at the initiation of the advance trade-in credit agreement and remains as the recipient of the advance trade-in credit at the subsequent purchase of a replacement vehicle without retitling the vehicles. Therefore, BANK may provide documentation that it is the legal owner of the off-lease motor vehicles by (1) completing the Form ST-556 as

'BANK formerly known as COMPANY1' or (2) attaching a statement to the Form ST-556 indicating the Company as the prior entity, BANK as the surviving entity redeeming the advance trade-in credit, and specifying the change in ownership as a valid statutory merger.

This conclusion is supported by ST 99-0241-GIL (Jul. 26, 1999), in which the Department identified the following requirements for a surviving or new corporation to use the Illinois advance trade-in credits of the prior corporation, it must:

. . . file a NUC-1 registration form and attach a statement that the change in business structure was due to a merger or consolidation. In addition, information should be included on Form ST-556 when the advanced trade-in credit is taken indicating the name of the prior corporation in whose name the advanced trade-in credit was originally issued, the name of the new or surviving corporation that is taking the advanced trade-in credit and a statement that the change in ownership of the advanced trade-in credit was due to a merger or consolidation pursuant to the Illinois Business Corporation Act.

Although BANK is not redeeming any advance trade-in credits earned by the Company, BANK indicates that it is the successor of ownership to the Company's off-lease motor vehicles in completing the Form ST-556 by populating the 'Buyer's Name' and 'Signature' fields as 'BANK formerly known as COMPANY1.' Alternatively, BANK may attach a statement to the Form ST-556 when taking the advance trade-in credit, indicating that the change in business structure is due to a statutory merger, recognized under the Illinois Business Corporation Act and that BANK and the Company are now one and the same. By indicating on the Form ST-556 that BANK was formerly known as the Company and that BANK and the Company are now one and the same, BANK evidences its ownership of the off-lease vehicles as the result of the merger without retitling the vehicles in order to use them to engage in advance trade-in credit agreements.

Conclusion

We respectfully request that the Department issue a ruling stating that:

1. BANK will qualify for the Illinois advance trade-in credit if it offers to enter into an Illinois advance trade-in credit agreement only with auction bidders who are dealerships affiliated with at least one of BANK's private label clients and meets all of the requirements in 86 Ill. Adm. Code 130.455(d) for the reasons stated above.
2. BANK is not required to retitle the motor vehicles originally titled in the Company's name, but acquired by BANK pursuant to the Merger in order to use the motor vehicles to earn the advanced trade-in credit and can evidence

ownership by completing Form ST-556 by (1) completing the Buyer's Name and Signature fields as 'BANK formerly known as COMPANY1' or (2) attaching a document to Form ST-556 indicating the name of the prior entity (i.e., the Company), and the name of the surviving entity (i.e. BANK), and stating that the change in business structure is due to a statutory merger.

Procedural Matters

In the event that this Request does not provide sufficient information to support our conclusions, BANK requests an opportunity to provide additional information, if needed, to more fully state our position with respect to the foregoing. We reserve the right to rescind this ruling request in case an unfavorable determination is resulted. If you have any questions or require additional information, please call me at X or Ms. Z at X.

DEPARTMENT'S RULING:

There are generally two types of trade-ins regarding vehicles 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 is taken at the time of the transaction, then the transaction cannot later be changed to create a trade-in for sales tax purposes. 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 (i.e. the one trading the vehicle to the dealer) becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advance trade-in transaction. 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).

Dealerships affiliated with private label clients

Generally, trade-in credits 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. However, if

- (i) the seller of the motor vehicle at the time of the auction is a disclosed principle as described in subsection (b) of 86 Ill. Adm. Code 130.1915,

(ii) at or before the time of bidding, the seller offers, 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

(iii) 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 purchase of another vehicle as long as all of the requirements of subsection (d) of Section 130.455 are met.

If BANK, as the disclosed seller of the motor vehicles at auction, offers as part of the auction sale terms 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, but only if that winning bidder is a dealership that is affiliated with at least one of BANK's private label clients, then, if the winning bidder is affiliated with at least one of BANK's private label clients, the auctioned vehicle may be used by BANK as an advance trade-in credit on the purchase of another vehicle from that winning bidder, as long as the transaction meets all of the other requirements stated in the preceding paragraph.

This ruling is based on the condition that at the time of bidding, all potential bidders are clearly made aware that the offer to enter into an advance trade-in agreement with the winning bidder is limited only to dealerships that are affiliated with one of BANK's private label clients. It is also based on the condition that the advance trade-in agreement is made a part of the binding sales contract entered into by the winning affiliated dealership for the purchase of the vehicle from BANK.

Merger

Section 130.455(d) of the Department's Administrative Rules provides in subsection (d)(3) that "[a]dvance 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). In order for BANK to be eligible to take the advance trade-in credit when it purchases a vehicle, it had to be the owner of the vehicle traded in within 9 months prior to that purchase on which the credit was earned.

We believe that the merger, as described in your letter and attached documentation, results in BANK being the surviving entity and the owner of the vehicles that were titled in the name of COMPANY1. For the vehicles that BANK owns as a result of the statutory merger, the cleanest way to document ownership of the vehicles traded in is for BANK to re-title the cars previously owned by COMPANY1 into BANK's name. However, BANK may enter into advance trade-in agreements using vehicles it acquired from COMPANY1 through the statutory merger with BANK without re-titling the vehicles if, as represented in this letter ruling request, BANK is the owner of the vehicles at the time it trades them in as a result of the statutory merger, assuming all other elements of Section 130.455(d) are met. When purchasing a vehicle for which BANK will use the advance trade-in credit involving a vehicle that was titled in the name of COMPANY1 before the statutory merger, we recommend that the buyer's name should be listed on the ST-556 Sales Tax Transaction Return as "BANK, (statutory merger with COMPANY1)."

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling

ST 12-0005-PLR

June 14, 2012

Page 16

is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules, or the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Terry D. Charlton
Chairman, Private Letter Ruling Committee