

August 23, 2013

Dear Xxxxx:

This letter is in response to your letter dated May 29, 2013, 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:

Pursuant to 2 Ill. Adm. Code 1200.120, the purpose of this letter is to request a general information letter (“GIL”) from the Illinois Department of Revenue (the “Department”).

In pertinent part, 35 ILCS § 120/2-51(c) defines “used as rolling stock moving in interstate commerce” as motor vehicles having a gross vehicle weight rating of more than 16,000 pounds that carry property for-hire in interstate commerce for more than 50% of total miles or trips during a 12-month period. In calculating qualifying miles or trips, a motor vehicle used on a for-hire basis by an authorized interstate motor carrier is used “as rolling stock moving in interstate commerce” when transporting property with a point of origin and/or destination outside Illinois. 35 ILCS § 120/2-51(c). Commingling property moving in interstate commerce with property moving in intrastate commerce aboard the same conveyance, e.g. a truck tractor and trailer, does not alter the status of either. *Ryder*, 91 M.C.C. 497. Thus, federal law classifies as interstate commerce a move involving any amount of interstate cargo aboard the vehicle.

Please provide the Department’s responses in a GIL to the following two Scenarios:

1. Property having a point of origin elsewhere travels by motor vehicle into Illinois. The property having a point of origin elsewhere is unloaded in Illinois and loaded aboard another motor vehicle that is partially loaded with property having an Illinois point of origin. Thus, property having a point of origin elsewhere and property having an Illinois point of origin are commingled aboard the same motor vehicle in Illinois and all the property is thereafter delivered in Illinois. For purposes of this Scenario #1, approximately 90% of the property aboard the motor vehicle and delivered in Illinois has an out-of-state point of origin, meaning

the shipments are comingled with some 10% of the property having an Illinois point of origin.

In calculating interstate miles or trips in this Scenario #1, please confirm whether the Department views the motor vehicle as “used as rolling stock moving in interstate commerce” within the meaning of 35 ILCS § 120/2-51 (c).

2. The same facts as stated above in Scenario #1 apply except, for purposes of this Scenario #2, approximately 90% of the property aboard the motor vehicle and delivered in Illinois has an in-state point of origin, meaning the shipments are comingled with some 10% of the property having an out-of-state point of origin.

In calculating interstate miles or trips in this Scenario #2, please confirm whether the Department views the motor vehicle as “used as rolling stock moving in interstate commerce” within the meaning of 35 ILCS § 120/2-51(c).

I appreciate your attention to this request and look forward to receiving your responses. If you should require any additional information, please feel free to contact me.

#### **DEPARTMENT’S RESPONSE:**

Notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce, or lessors under leases of one year or longer executed or in effect at the time of purchase to interstate carriers for hire for use as rolling stock moving in interstate commerce. 35 ILCS 120/2-5(12). In addition, notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire. 35 ILCS 120/2-5(13). See 86 Ill. Adm. Code 130.340(a).

Effective July 1, 2004, the trips or mileage of a motor vehicle for which persons or property are carried for hire just between points in Illinois may be used to qualify for the rolling stock exemption, if the journey of the passenger or shipment of the property either originates or terminates outside of Illinois. A carrier may use intrastate trips to qualify for the above-mentioned rolling stock exemption, so long as the carrier can document that the journey of the passenger or shipment of the property either originated or terminated outside the State of Illinois. See 86 Ill. Adm. Code 130.340(i).

The Department has provided an example that may assist in determining whether trips or mileage may be used to qualify for the rolling stock exemption See ST 06-0122 (June 5, 2006)

“For example, if the initial documentation for a shipment of goods from out-of-state into Illinois indicates that the destination is at the warehouse in City A, Illinois, then any subsequent shipment of the goods from the warehouse in City A to another destination in Illinois will not qualify as part of an interstate trip. However, if the initial documentation for a shipment of goods from out-of-state into Illinois indicates that the destination is at City B, Illinois, via the warehouse in City A, then the subsequent travel of the goods from the warehouse in City A to the destination in City B can count as part of the interstate trip.”

In the two examples you provided, the trips or interstate miles may be used in calculating whether a motor vehicle used on a for-hire basis is used “as rolling stock in interstate commerce.” The carrier must

maintain documentation to indicate that the journey of the shipment of property either originated or terminated outside the State of Illinois.

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,

Richard S. Wolters  
Associate Counsel

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