

ST 14-0053-GIL 12/29/2014 MOTOR VEHICLES

This letter discusses sales of motor vehicles to nonresidents. See 86 Ill. Adm. Code 130.605.

December 29, 2014

Dear XXXX:

This letter is in response to your letter dated November 1, 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 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:

We are a Franchised Auto Dealer Group in LOCATION, IL and process individual auto sales transactions on Form ST556. On several occasions throughout a year, customers wish to purchase an automobile, titling the vehicle outside of Illinois. Whenever these transactions are presented to our staff, we always collect standard documentation which includes a state driver’s license. We have had several IDOR audits and reviews and from experience with these, understand that the IDOR auditors look for “Out of State” transactions to have an out of state driver’s license proving the customer is a resident of the state in which we are processing the transaction. Many customers have expressed that they have an Illinois driver’s license and an Illinois address, however they are a permanent resident of another state or are in the process of moving to another state.

Our Question is: If a retail customer has only an Illinois Driver’s License as proof of Identity, are they considered an Illinois resident for sales tax purposes? Are there any other specific documents that we could collect to prove the above customer is not an Illinois resident for sales tax purposes?

This is important for us to have a specific answer with specific documents necessary to process transactions like these; currently we do not process transactions out of state (using box 5a) without a valid out of state driver’s license on file.

We appreciate your assistance,

DEPARTMENT'S RESPONSE:

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. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. Mere possession in Illinois is considered a use. Consequently, if the purchase occurs in Illinois, the purchaser must pay the Use Tax to the retailer. Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State immediately transports the property out of this State for use outside the State. See 86 Ill. Adm. Code 130.605(a)(2).

An exception to the rule stated above is that tax is not imposed upon the sale of a motor vehicle in this State to a nonresident even though the motor vehicle is delivered to the nonresident in this State, if the motor vehicle is not to be titled in this State, and if a drive-away permit for purposes of transporting the motor vehicle to the other state is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code [625 ILCS 5/3-603] or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his or her home state. 86 Ill. Adm. Code 130.605(b)(1). However, this exemption does not apply if the state in which the motor vehicle will be titled does not allow a reciprocal exemption for a motor vehicle sold and delivered in that state to an Illinois resident but titled in Illinois. 86 Ill. Adm. Code 130.605(b)(1)(C).

The rule cited above discusses the documentation required by the retailer to support the exemption. In subsection (b)(1)(A)(ii) the rule states:

- ii) When the purchaser is a natural person, failure to keep a copy of the purchaser's non-Illinois driver's license or the presence of a copy of the purchaser's Illinois driver's license in the records related to the sale creates a rebuttable presumption that the purchaser is an Illinois resident ineligible for the exemption under this subsection (b)(1). To rebut this presumption, the retailer must keep evidence of the nonresidency of the purchaser in the records related to the sale, such as a voter registration card listing a non-Illinois address, a copy of a purchase contract or lease agreement for a new residence outside of Illinois, a copy of a tax return from another state that declares residency in that other state, a credit report listing the primary address as out-of-state, property tax records claiming a homestead exemption for an out-of-state residence, or any other documentation that clearly shows that the purchaser is not an Illinois resident. In addition, the retailer must also obtain and keep in the records related to the sale a certification from the purchaser in substantially the following form:

"I, (purchaser), under applicable penalties, including penalties for perjury and fraud, state that I am not an Illinois resident. I understand that if I am a resident of Illinois or use the motor vehicle in Illinois for 30 or more days in a calendar year, I am also liable for tax, penalty and interest on this purchase." See 130.605(b)(1)(A)(ii).

The rule goes on to say that:

- iv) If the retailer meets the requirements of subsection (b)(1)(A)(i), (ii) or (iii) to document the exemption, then, absent fraud, the Department shall pursue any claim that the exemption does not apply solely against the vehicle purchaser. If, however, the retailer does not meet the requirements of subsection (b)(1)(A)(i), (ii) or (iii) to document the

exemption, then the exemption claimed by the retailer shall be disallowed subject to further review by the Department. See 130.605(b)(1)(A)(iv).

In cases where a non-Illinois driver's license is not present in the records related to the sale, the Department will follow the procedures outlined above to confirm a retailer's eligibility to claim the exemption.

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,

Samuel J. Moore
Associate Counsel

SJM:ikm