

This letter concerns the interim use exemption. See 86 Ill. Adm. Code 150.306. (This is a GIL.)

December 3, 2015

Dear Xxxxx:

This letter is in response to your letter dated June 3, 2015 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:

Per multiple inquiries to the state auditor department and other dealerships we are hoping to clear up some confusion and discrepancies we have about taxes on loaner vehicles that we have in our dealership. Our dealership includes a loaner department for our service customers with about 15 vehicles. MANUFACTURER leases us the vehicles for a monthly payment. When the vehicles come in, we complete an Illinois 556 form and title.

We use the vehicles for approximately one year as loaners free of charge to the customers. MANUFACTURER then wholesales them to our dealership. DEALERSHIP then puts them into our Used Vehicle department for resale. When we sell the vehicle “retail” to a customer, we collect the tax and forward that to the state.

The state auditor says we need to pay tax on those vehicles when we first title them, and when we sell them retail. I have checked with MANUFACTURER and other dealers in our state and they advised me they are not paying tax on those vehicles until they are retailed. They advised us to check “other” on the 556 forms and put “for interim use.” Those dealerships are charging for their rentals and collecting the 5% tax as they rent it. We are not charging the customers as we go.

I am hoping you can clear up the confusion for us. I spoke to the supervisor to the auditors; INDIVIDUAL and she informed me if the dealership does pay up front, we should get to credit back what the customer pays us for the “retail” sale. As of this date there has been no one able to verify anything in writing explaining what the proper procedure is. INDIVIDUAL directed us to your office to help clarify the proper procedure.

Please call if you have any questions.

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 at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, a Use Tax is also 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. These taxes comprise what is commonly known as "sales" tax in Illinois.

However, Section 2 of the Use Tax Act states in part that "'Use' does not mean the demonstration use or interim use of tangible personal property by a retailer before he sells that tangible personal property." See 35 ILCS 105/2. The Department's regulation at 86 Ill. Adm. Code 150.306 describes the Interim Use and Demonstration Exemption. Specifically, subpart (a)(1) provides guidance regarding when tangible personal property qualifies for the interim use exemption. In particular, please note that the property must be available for sale during the interim use period. Whether the property will qualify for the interim use exemption depends, among other things, on how the property is carried on the retailer's books and whether the property is deducted or depreciated under certain provisions of the Internal Revenue Code. It is not clear from the information provided the nature of the payments the dealership makes to the manufacturer, but the interim use exemption is only available if the retailer has purchased the item for resale and the item is in the retailer's sales inventory.

Vehicles that are purchased for resale by an automobile dealership but are used in the interim as loaner cars may, if the requirements of the rule are met, qualify for the interim use exemption under 86 Ill. Adm. Code 150.306. For vehicles that qualify, you should mark Step 5, Box F "Other" and write "Interim Use" when completing the ST-556 Sales Tax Transaction Return.

We note that your letter describes how other automobile dealerships document an exemption. Without more information we cannot verify that this is the correct procedure to use.

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:mdb