

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

December 10, 2020

Dear Xxxx:

This letter is in response to your letter dated August 28, 2020, in which you requested 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:

The COMPANY is requesting a “Private Letter Ruling” for our account in regards to the vehicles we place into service loaner status. When we file the ST-556 for the service loaner vehicles we are marking them as exempt for “Interim Use”. Per Title 86 Part 150 Section 150.306 Interim Use and Demonstration Exemptions, we find that we do qualify due to the following facts.

1. The vehicles are part of COMPANY1 Loaner Program in which we title the vehicle in COMPANY2’s name, a captive finance company, for insurance purposes only.
2. The vehicles are used in COMPANY’s service department for the benefit of our customers.
3. The vehicle is never removed from our inventory and/or floor plan.
4. Once the vehicle is removed from loaner service, the title is signed over to the COMPANY so that we may sell the vehicle.
5. We do NOT elect to claim an Internal Revenue Code section 179 deduction on the item as a depreciable business asset.
6. The gross receipts received DO NOT exceed the retailer’s selling price of the vehicle.

We have been granted and are currently awaiting a late discretionary hearing for the matter of the “Interim Use” exemption for the vehicles we place in loaner service (please see attached notice). In the meantime, we have received two additional notices in which we have been denied “interim use” for the same issue that we are awaiting our hearing. I’ve attached the returns along with a copy of Title 86 Part 150 Section 150.306 for your convenience. We are furthermore requesting that these 2 additional returns be either included in the Private Letter Ruling or be attached to our Late Discretionary Hearing. Should any additional information be needed please contact NUMBER.

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 recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. Your letter indicates that this matter is currently before the Department’s Office of Administrative Hearings. We hope, however, the following General Information Letter will be helpful in addressing your questions.

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 “[u]se' 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.

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. Subdivision (a)(1)(A) of the rule sets forth conditions under which the interim use exemption may not be claimed. Item (i) in that subdivision provides that the exemption may not be claimed if “title to the item is held by any party other than the retailer, except that title may be held by the retailers, the manufacturer of the item, or a captive finance company[.]” 86 Ill. Adm. Code 150.306(a)(1)(A)(i) Your letter

indicates that loaner vehicles are titled in the name of a captive finance company for insurance purposes. You should provide documentation supporting this assertion in your late discretionary hearing proceedings.

You also state that you have received two additional Notices of Tax Liability. You cannot protest a Notice of Tax Liability by submitting a letter ruling request. In order to protest any Notice of Tax Liability, you must file a protest and request a hearing directly with the Department's Office of Administrative Hearings.

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:tlc