

The sale of a first division motor vehicle to an Indiana resident who takes delivery in Illinois but will register the motor vehicle in Indiana is subject to Illinois Retailers' Occupation Tax and Use Tax, including the \$10,000 cap on the deduction allowed for the value of the trade-in of a first division motor vehicle when calculating the tax. See 35 ILCS 120/2-5(25-5)) and 86 Ill. Adm. Code 130.425. (This is a GIL.)

September 7, 2021

Dear NAME:

This letter is in response to your letter dated January 31, 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](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:

I have reviewed the recently amended definition of "selling" price contained in 35 ILCS 105/2, and also Illinois Department of Revenue (IDOR) Informational Bulletin FY2020-1 and also IDOR's Trade-in Credit Limit Frequently Asked Questions (FA-14).

#### QUESTION

Given the fact pattern described below, is there any exception to the \$10,000 trade-in credit limit that would apply to a transaction involving an Indiana resident who purchases a First Division motor vehicle from an Illinois auto dealer that would allow for a \$15,000 trade-in credit because of the customer's status as an Indiana resident?

#### FACTS

On 1/15/2020, resident of the state of Indiana purchases a First Division motor vehicle from an Illinois auto dealer for \$40,000 and trades in

another First Division motor vehicle worth \$15,000, therefore the cash consideration paid to the Illinois dealer is \$25,000.

Thank you for your time and attention to this request for a General Information Letter.

In a follow-up communication, you added the following information:

This transaction is taxed at the rate of 6.25% (non-reciprocal tax rate), pursuant to ST-58, Reciprocal – Non-Reciprocal Vehicle Tax Rate Chart (attached).

#### **DEPARTMENT'S RESPONSE:**

The 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. 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. These taxes comprise what is commonly known as "sales tax" in Illinois.

#### **\$10,000 Cap on Trade-in Deduction**

Retailers' Occupation Tax is measured by gross receipts from the sale of tangible personal property to end-users. See 35 ILCS 120/2-10. "Gross receipts" is defined as "the total selling price or the amount of such sales." See 35 ILCS 120/1. Use Tax is imposed on "the selling price . . . of the tangible personal property." See 35 ILCS 105/3-10. Before the enactment of Public Act 101-31, the Retailers' Occupation Tax Act and Use Tax Act defined "selling price" or the "amount of sale," in relevant part, as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, *but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold . . .*" See 35 ILCS 105/2 and 35 ILCS 120/1, emphasis added. Public Act 101-31 amended the definition of "selling price" in the Retailers' Occupation Tax Act and the Use Tax Act to provide that, "beginning January 1, 2020, 'selling price' *includes the portion of the value of or credit given for traded-in motor vehicles of the First Division as defined in Section 1-146 of the Illinois Vehicle Code of like kind and character as that which is being sold that exceeds \$10,000.*" (emphasis added) This provision capped at \$10,000 the deduction allowed for the value of the trade-in of a first division motor vehicle when calculating tax on the sale of a motor vehicle. See 86 Ill. Adm. Code 130.425.

#### **Sale of Vehicle to Resident of Non-Reciprocal State**

Item (25) of Section 2-5 of the Retailers' Occupation Tax Act provides an exemption from the tax for ". . . a motor vehicle sold 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 is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his or her home state.” (35 ILCS 120/2-5(25))

Item (25-5) of Section 2-5 of the Retailers’ Occupation Tax Act provides in part that “[t]he exemption under item (25) 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.” (35 ILCS 120/2-5(25-5)) Publication ST-58, Reciprocal – Non-Reciprocal Vehicle Tax Rate Chart indicates that Indiana is a non-reciprocal state for purposes of item (25-5). Item (25-5) goes on to provide that “[t]he tax collected under this Act on the sale of a motor vehicle in this State to a resident of another state that does not allow a reciprocal exemption shall be imposed at a rate equal to the state’s rate of tax on taxable property in the state in which the purchaser is a resident, except that the tax shall not exceed the tax that would otherwise be imposed under this Act.” The State sales tax rate in Indiana is 7%, which exceeds the 6.25% rate under the Retailers’ Occupation Tax Act. Therefore, sales of motor vehicles to residents of Indiana who take delivery in Illinois are subject to Illinois Retailers’ Occupation Tax at the rate of 6.25%.

### **Discussion**

There is no exception to the \$10,000 cap on the trade-in deduction for sales of first division motor vehicles to Indiana residents who take delivery in Illinois. Sales of motor vehicles to residents from non-reciprocal states who take delivery in Illinois are subject to Retailers’ Occupation Tax. As a result, all provisions of the Retailers’ Occupation Tax Act apply, including the \$10,000 cap on the deduction allowed for the value of the trade-in of a first division motor vehicle when calculating tax on the sale of a motor vehicle.

We note, however, that for sales that occur on or January 1, 2022, Public Act 102-353, removes the \$10,000 cap on the deduction that may be taken for trade-ins when calculating tax.

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,

Samuel J. Moore  
Associate Counsel

SJM:bkl