

Sales of motor vehicles made into interstate commerce, per the provisions of 86 Ill. Adm. Code 130.605(b)(1), are not subject to Retailers' Occupation Tax. (86 Ill. Adm. Code 130.605) (This is a GIL)

June 7, 2022

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated January 20, 2022, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued at the discretion of 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:

I purchased a YEAR VEHICLE Vin##### from DEALERSHIP of Chicago on October 21, 2021. When I purchased the vehicle, I advised the salesman and the finance department that I had dual residency in STATE1 and STATE2. At the time of the transaction, I was at my residence in STATE2 so all of the documents that needed wet signatures were sent to that address. I advised the dealership that the vehicle would be sent directly from their location to STATE1. The dealership issued me a drive away temporary tag. I then planned for the vehicle to be picked up by COMPANY and delivered to my friend's home in STATE1 because I would not be available to accept delivery. As you'll be able to see on the paperwork that will be in this packet, the dealership charged me sales tax.

When I took all of the paperwork from the dealership to the DMV in STATE1, they proceeded to tell me that the tax paid to the dealership would not apply to the taxes that I needed to pay STATE1. I was confused as to why this would happen, but they explained to me that if I wanted to

NAME

Page 2

June 7, 2022

title and register the vehicle in STATE1, I would have to pay sales tax to STATE1. I paid the monies to the DMV and then I immediately reached out to the dealership for clarification. The dealership explained that because I had a home in STATE2 that I was required to pay the Illinois sales tax since STATE2 isn't a state with reciprocity.

Once the dealership refused to refund me the unjustly collected sales tax, I contacted the State of Illinois Department of Revenue. I emailed and spoke with EMPLOYEE, who is in the DIVISION at the Illinois Department of Revenue. He advised me that he had never been presented with a situation with these variables and that my best option would be to reach out to the State of Illinois and request a PLR, private letter ruling. I will supply all the paperwork that I have from the dealership and from the STATE1 DMV. I hope that after your commission reviews the documentation you will rule in my favor to refund the taxes collected by DEALERSHIP. I want to make sure that the commission understands that the vehicle never entered the State of STATE2. The vehicle is and always will be at my home in STATE1. The purpose of an AWD vehicle is not necessary for STATE2 road conditions. Please let me know if you require any further documentation or information. If necessary, I will be willing to provide you with a sworn statement under penalty of perjury.

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. See 35 ILCS 120/2; 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. Thus, when tangible personal property is located in this State at the time of its sale and then delivered in Illinois to the purchaser, the seller is taxable if the sale is at retail.

There is an exemption from sales tax for the purchase of a vehicle in Illinois by a nonresident when the vehicle will not be titled in this State. See 86 Ill. Adm. Code 130.605(b)(1). To claim the exemption, the retailer must keep documentary evidence that the purchaser is not a resident of Illinois. The documentation required to prove non-residency is specified in 86 Ill. Adm. Code 130.605(b)(1)(A)(i) and (ii). If the retailer meets the document requirements of either subsection (b)(1)(A)(i), or (ii) then, absent fraud, the Department shall pursue any claim that the exemption does not apply solely against the vehicle purchaser. *Id.* at (iv). However, the exemption under 86 Ill. Adm. Code 130.605(b)(1) 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

NAME

Page 3

June 7, 2022

that state to an Illinois resident when the vehicle will be titled in Illinois. *Id.* at (b)(1)(C). Even though North Carolina is a reciprocal state, Florida is not. A retailer is not required to honor a purchaser's claim of an exemption if the retailer is not convinced that the retail sale qualifies.

In your letter you stated, "The dealership explained that because I had a home in STATE2 that I was required to pay the Illinois sales tax since STATE2 isn't a state with reciprocity." Proof that the purchaser is a resident of STATE1, that the vehicle was titled in STATE1, which is a reciprocal state, as well as the fact the vehicle did not enter STATE2 before the vehicle was titled, are critical factors to evidence the sale is exempt from Illinois sales tax. Since the dealership paid the sales tax directly to the Department, the dealership is the only party with standing to file a claim regarding an overpayment of the tax. See 86 Ill. Adm. Code 130.1501. A retailer's determination as to whether it will make a refund of the amount of the tax to a customer and file a claim for credit with the Department is a matter between the retailer and its customer. The Department has no authority to compel a retailer to refund taxes to a customer and file a claim for credit.

We 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,

Tom Grudichak
Associate Counsel

TG:rkn