

This letter discusses sales of motor vehicles to nonresidents. See 86 Ill. Adm. Code 130.605. (This is a GIL.)

November 24, 2008

Dear Xxxxx:

This letter is in response to your letter dated April 11, 2008, 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:

I live in Canada, and recently purchased a vehicle in Illinois and bought it across to Canada within a few days of purchase. I was told by the dealership that I had to pay state taxes, even though I lived out of state. I had to register the vehicle to a US address for warranty purpose [sic] and that meant I had to pay the taxes. Vehicle was registered Illinois license plates were issued and taxes were paid.

I was given a ST-556 (attached) Sales Tax Transaction Return paper showing that I paid taxes. I was looking at this paper and I noticed Section 5 refers to 'Is the sale exempt from tax?' and below that is a box that says 'Out-of-state Buyer', so I figured that I should have been exempt from tax. I spoke to the dealership again, and they still say that I have to pay the tax.

My question to you is should I have been exempt from state tax and would I be able to get the taxes refunded.

I hope to get a clear ruling from you regarding this matter, thanking you in advance for your cooperation. If you require any further information feel free to contact me.

I can be reached at the above address or by my email.

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).

The State of Illinois has no specific exemption for purchases by foreign travelers where the property is delivered and used in Illinois. However, retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales. For example, the exemption would apply when a seller makes delivery in Illinois to a freight forwarder who handles the arrangements for the property to be delivered outside the United States, not to be returned to the United States. 86 Ill. Adm. Code 130.605(g). However, there is no exemption for property delivered in Illinois to foreign vessels.

The result would be different if the purchaser received or picked up the goods prior to delivery to a freight forwarder. A sale is not deemed to be in foreign commerce if the purchaser or his representative receives the physical possession of the property in this State. 86 Ill. Adm. Code 130.605(a)(1). This is so notwithstanding the fact that the purchaser may, after receiving physical possession of the property in this State, transport or send the property out of the State for use outside the State or for use in the conduct of foreign commerce.

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).

Based on the information provided in your letter, the transaction does not appear to qualify for 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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Debra M. Boggess
Associate Counsel

DMB:msk