

This letter responds to a survey concerning taxation of vehicles. See 86 Ill. Adm. Code 151.101 et seq. and 180.101 et seq. (This is a GIL.)

December 8, 2008

Dear Xxxxx:

This letter is in response to your e-mail dated October 13, 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](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:

Each year, this Department submits the attached certification questionnaire to your agency concerning various types of motor vehicles and inquires about their taxable status within your state. Our last request to which you responded was dated October 9, 2007. Your reply and information provided in response to the questionnaire were not only appreciated, but they were also most beneficial to our Department and to those motor vehicle dealers in Florida who have made sales to residents of your state.

To continue using an accurate rate of tax from your state, we would again greatly appreciate your cooperation in completing the attached updated questionnaire.

Please complete the questionnaire in its entirety, even if there have been no changes in your state's tax laws or policies

This year we are also attaching an additional survey concerning long-term leases of motor vehicles.

Thank you very much for your help. Please have the completed survey and any comments returned to me on or before October 31, 2008.

**DEPARTMENT'S RESPONSE:**

This letter will follow up our telephone conversation on January 14, 2008. The Department cannot approve publications other than those issued by the Department of Revenue. However, we hope the following information will provide sufficient guidance to answer your questions.

The first part of your questionnaire asks for a response to its questions for 8 different types of vehicles: automobiles, trucks, motor homes, mobile homes, trailers, boats, motorcycles, and off-road vehicles.

**1. “Is item taxed under your sales or use tax statutes? YES or NO”**

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. (35 ILCS 120/2) The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. (35 ILCS 105/3) Each of the items listed in your questionnaire is subject to the Retailers' Occupation Tax and the Use Tax.

**2. “If YES, at what rate?”**

The State rate of tax imposed under the Retailers' Occupation Tax Act (35 ILCS 120/2-10) and the Use Tax Act (35 ILCS 105/3-10) is 6.25%. Additional taxes may be imposed by units of local government.

**3. “If NO, is this item taxed under another section of your statutes? YES or NO”**

Not applicable.

**4. “If YES, please explain.”**

Not applicable.

**5. “Does your state exempt occasional or isolated sales between individuals of motor vehicles? YES or NO”**

The Retailers' Occupation Tax Act does contain an occasional sale provision, which is discussed at 86 Ill. Adm. Code 130.110. However, the Vehicle Use Tax is imposed on transfers of motor vehicles between private parties (See 86 Ill. Adm. Code 151.101 et seq.), the Watercraft Use Tax is imposed on transfers of certain watercraft between private parties (See 86 Ill. Adm. Code 153.101 et seq.), and the Aircraft Use Tax is imposed on transfers of aircraft between private parties (See 86 Ill. Adm. Code 152.101 et seq.). These taxes imposed on transfers between private parties (non-retailers) do not exempt isolated or occasional sales.

**6. “Do your statutes provide for a maximum amount of tax or tax rate? YES or NO”**

The State rate of tax imposed under the Retailers' Occupation Tax Act and the Use Tax Act is 6.25%. Additional taxes may be imposed by units of local government. Some local taxes have rate caps, some do not. The rate of tax imposed under the Watercraft Use Tax Law and the Aircraft Use Tax Law is 6.25%. For maximum rates under the Vehicle Use Tax, see 86 Ill. Adm. Code 151.101 et seq.

**7. “Do your statutes provide for tax computation after trade-in allowance? YES or NO”**

Yes, in retail transactions where the item that is traded-in is of like kind and character as that which is being sold. No, in non-retail transactions. For example, no trade-in allowance is authorized under the Vehicle Use Tax, the Watercraft Use Tax, or the Aircraft Use Tax.

8. **“If a resident of your state purchases and takes possession of a new or used motor vehicle in Florida, to be licensed within 45 days in your state, and pays sales tax to Florida at the rate applicable in your state, not to exceed 6%, would your state recognize sales tax paid in Florida as being lawfully imposed? (SEE s. 212.08(10)(a), F.S., on the second page.)”**

See 35 ILCS 105/3-55(d).

9. **“Are the sales of motor vehicles to military personnel who are residents of your state exempt? YES or NO”**

Please note that military personnel are not generally exempt from taxation in Illinois.

10. **“If yes, please explain and/or list statutory or regulatory reference.”**

Not applicable.

11. **“If a nonresident military member, who is stationed in your state, purchases and takes possession of a motor vehicle in your state but chooses to title/register the vehicle in his/her home state of record, is the motor vehicle subject to your state’s sales tax? YES or NO”**

No, if the proper procedures are followed, including, but not limited to, licensing the vehicle in his or her home state of record. For purposes of sales tax, Illinois considers a member of the military whose home state of record is not Illinois to be a nonresident.

12. **“If a nonresident military member is stationed overseas, purchases a motor vehicle while overseas but is subsequently assigned to duty in your state, is the motor vehicle subject to your state’s use tax if the nonresident military member chooses to title/register the vehicle in his/her home state of record, YES or NO”**

See 35 ILCS 105/3-70 and 86 Ill. Adm. Code 150.315 concerning nonresident exemptions.

The second part of your questionnaire concerns only the "long-term" lease of motor vehicles.

**THE FOLLOWING QUESTIONS PERTAIN TO THE LONG-TERM LEASE OF MOTOR VEHICLES. PLEASE ADD ADDITIONAL COMMENTS AS NEEDED:**

1. **“Is the long-term lease (12 months or more) of a motor vehicle taxed under your sales or use tax laws or statutes? YES or NO”**

Except as noted below, the State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. There is an exception to this rule for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq. and 86 Ill. Adm. Code 180.101. This tax is imposed at the rate of 5% of the gross receipts from such business. "Gross receipts" from the renting of tangible personal property or "rent," means the total rental price or leasing price. See also, 86 Ill. Adm. Code 180.120 and 180.125. When automobiles are purchased

to be used as rental cars for terms of one year or less, they may be purchased without paying Retailers' Occupation Tax or Use Tax.

**2. "If YES, at what rate?"**

See answer to question 2 above.

**3. "If NO, is the long-term lease of a motor vehicle taxed under another section of your statutes?"**

**YES or NO**

**If yes, please explain."**

See answer to question 2 above.

**4. "If the long-term lease of a motor vehicle is subject to sales tax, is the tax required to be paid 'up front' on the lease? YES or NO**

**If YES, is the tax lawfully imposed on the lessor or lessee?"**

As indicated in question 2 above, the lease payments on the lease of a motor vehicle for more than one year are not subject to tax in Illinois. However, when the lessor purchases the motor vehicle to lease it for a period greater than one year, the lessor owes Use Tax on its cost price of such property.

**5. "If the tax is required to be paid 'up front', and the vehicle leaves your state, is there a prorated credit or refund allowed for taxes previously paid? YES or NO"**

No. The tax paid "up front" in this instance is a Use Tax owed by the lessor who is leasing the motor vehicle for a period greater than one year.

**6. "If a vehicle that was leased in another state is brought into your state, are the subsequent rental payments subject to sales or use tax? YES or NO"**

No. The State of Illinois imposes no tax on rental receipts from the lease of a motor vehicle for more than one year. Consequently, lessees incur no tax liability. However, prior to registering the vehicle, Illinois Use tax must be paid on the motor vehicle. Illinois will give credit for sales or use taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310(a)(3).

**7. "If YES, is credit given for tax previously paid to another state on rental payments? YES or NO"**

See answer to question 6 above.

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.

Sincerely,

Samuel J. Moore  
Associate Counsel