

This letter concerns an advance trade-in transaction. See 86 Ill. Adm. Code 130.455. (This is a PLR.)

September 9, 2011

Dear Xxxxx:

This letter is in response to your letter dated July 25, 2011, in which you requested a Private Letter Ruling and various telephone and e-mail correspondence concerning that request. 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

Please view this letter as a private letter ruling as to the application of the Illinois Department of Revenue's ('Department') advance trade-in rules for motor vehicles which are traded-in by a leasing company under the scenario stated below. As you know, private letter rulings cannot be cited or relied upon for authority after ten (10) years, as a result the Department has advised taxpayers to obtain updated private letter rulings on past issues when private letter rulings addressing such issues are more than ten (10) years old. 86 Ill. Admin. Code 1200.110. Since the last private letter ruling that has facts substantially similar to this request, was issued in 1995, it can no longer be cited as reflecting Department policy, so this private letter ruling is necessary to provide guidance to my client on whether the Department's policy has changed.

BACKGROUND

We represent COMPANY, a company primarily engaged in the business of leasing motor vehicles for lease periods of more than one year (the 'Company'). Since the

Company cannot purchase its vehicles directly from the manufacturer, the vehicles are purchased by the Company through automobile dealerships that may be located either within or without the State of Illinois (the 'dealership'). With respect to these purchases, the Company is starting to make advance trade-ins (under 86 Ill. Admin. Code 130.455) to such dealerships of the used vehicles it had previously purchased for lease. The Company has offices at CITYIES, Illinois. It is currently under an Illinois Income Tax audit, but not an Illinois Retailers' Occupation Tax or Use Tax audit, and the transactions noted herein are not part of any audit period nor are they an issue in any audit. There is no authority contrary to the information provided herein, nor has the Department specifically ruled on this issue for the Company or a related company or predecessor. A power of attorney is also attached as Exhibit A.

FACTS

These purchase and advance trade-in transactions are being handled as follows:

1. The dealership and the Company have in place a Fleet Purchase Agreement for the purchase of new vehicles. The dealership and the Company also have in place a Master Sales/Trade-In Agreement (the 'Master Sales Agreement') which coordinates the purchase of motor vehicles by the Company under its Fleet Purchase Agreement with the advance trade-ins of used vehicles by the Company (copy of Master Sales Agreement Form and Fleet Purchase Agreement Form are all together attached as Exhibit B).

The Advanced Trade-in

2. When the Company has a used vehicle to be traded-in to the dealership, the Company will notify the dealership for acceptance or rejection, as well as the dealership's auctioneer of the availability of the vehicle for pick up and evaluation.

3. If the dealership does not reject the trade-in, then upon verification of the odometer reading and condition of the vehicle by the dealership's auctioneer, and assuming no disagreements arise, the bill of sale, Advance Trade-In Agreement and title paperwork is then prepared and copies sent to the dealership acknowledging the transfer of 'title' and 'ownership' of the vehicle from the Company to the dealership.

4. The Master Sales Agreement and bill of sale expressly provide that the trade-in credit for the used vehicle shall be equal to the net price received by the dealership at the future auction of the vehicle.¹ After the auction price is determined, the bill of sale and Advance Trade-in Agreement will be updated to reflect the actual credit amount and the updated bill of sale and the Advance Trade-In Agreement is then sent to the dealer. The Advance Trade-In Agreement commits the Company to purchase another vehicle within nine months of the title transfer. As with the Master Sales Agreement and bill of sale, the Advance Trade-In Agreement also provides that the trade-in credit value of the vehicle shall be expressly set as the price determined at auction and also provides for a specific expiration date for the trade-in credit.

5. Upon the used vehicle's sale at auction by the dealership, 'title' to the vehicle is then passed from the dealership to the ultimate purchaser. The dealership then pays the cash credit owed to the Company for the trade-in by directing the auctioneer to transfer the net proceeds of the sale to an account directed by the Company's nominee, a qualified intermediary ('QI') as provided under I.R.C. §1031.²

The New Vehicle Purchase

6. For new vehicles purchased by the Company from the dealership pursuant to the Fleet Purchase Agreement, the Company orders the vehicles on the dealership's behalf directly from the vehicle manufacturer. Upon acceptance of the purchase order by the dealership, the Company is required to pay the invoice due for the new vehicle directly to the manufacturer. Ownership of the new vehicles purchased will then pass through the dealership to the Company.

7. To reduce dealership costs, the Master Sales Agreement requires the Company to prepare much of the sales and trade-in transaction paperwork for the dealership as part of the agreement. To avoid time delays and also to reduce the dealership's costs, the dealership has provided the Company or an affiliate of the Company, with a limited power of attorney to sign when necessary, all sales and trade-in paperwork, including any titles, bills of sale and advance trade-in agreements, on behalf of the dealership.

8. For each new vehicle acquired from the dealership, the appropriate ST-556 or RUT-25 is completed on the purchase, and the available advance trade-in credit taken on such tax forms. The forms are then filed with the Department with the applicable tax due.

ISSUE

Please confirm that the above transaction qualifies under the advance trade-in rules of the Department.

APPLICABLE LAW

The Illinois Use Tax imposes a tax on the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. The state rate of tax is 6.25% of the selling price of the tangible personal property. 35 ILCS 105/3-10.

In determining the 'selling price' of an item for sale, the consideration paid on the sale excludes 'the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind or character as that which is being sold.' 35 ILCS 105/2. In this regard, the Department has issued regulations governing the use and applicability of the trade-in provision of the Illinois Retailers' Occupation Tax and Use Tax. 86 Ill. Admin. Code § 130.455. These regulations expressly provide that 'advance trade-ins' are allowed in the purchase of a vehicle. 86 Ill. Admin. Code § 130.455(d).

In an advance trade-in situation, the regulations make it clear that an advance trade-in is allowed if the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within nine months after the date of the advance trade-in transaction. Id. The advance trade-in provisions only require that there would be a contract that obligates the purchaser to purchase the new vehicle within the nine-month credit period. It makes no difference whether the purchaser receives cash or credit for the advance trade-in, as long as a value of the trade-in credit is determined, the obligation to purchase is expressed, and the date of expiration of the advance trade-in credit is set forth, in the contract. Id. Moreover, multiple vehicles may be traded in and the accumulated trade-in credits accrued and used against the purchase of one or more new vehicles. 86 Ill. Admin. Code § 130.455(f).

In the Department's Letter Ruling ST 95-0293 (7/10/95), the Department sets forth its approval of the use of the advance trade-in rules for the advance trade-in of vehicles by a leasing company to a dealership in the purchase of new vehicles. See generally ST 05-0008 PLR (8/25/2005). Both of these Letter Rulings are consistent with the regulations and are consonant with other rulings on trade-ins issued by the Department.

ANALYSIS & CONCLUSION

In the transaction under consideration, the dealership is receiving title to various used vehicles from the Company as trade-ins on the purchase of new vehicles from the dealership. Both the sale of the new vehicles and the acceptance of the advance trade-ins is provided for under the Master Sales Agreement and Fleet Purchase Agreement between the dealership and the Company. The Master Sales Agreement sets forth the rights and obligations of both parties and requires that the Company sign an advance trade-in agreement setting forth its obligation to purchase a new vehicle within nine months of the trade-in. As required by the advance trade-in regulations, the advance trade-in agreement (a) specifically requires the Company to purchase a new vehicle, (b) provide for a trade-in value for the traded-in vehicles, and (c) set an expiration date for the value of the advance trade-ins. When new vehicles are purchased from the dealership within nine months of the expiration of the advance trade-in credits, the credits will be taken on the applicable ST-556s or RUT-25s as credits against the tax due on the purchase of the new vehicles.

The purchase and trade-in arrangement at issue herein is nearly identical to the advance trade-in scenario approved in Private Letter Ruling ST 95-0293 (7/10/1995). In that letter ruling, a leasing company made advance trade-ins to a dealer and delivered the vehicles directly to the designated auctioneer or a wholesaler for re-sale [sic] as directed by the dealer. By their agreement, as in this case, much of the paperwork was required to be done by the leasing company and the leasing company received cash credit for the trade-in. The leasing company then paid the full purchase price of the vehicle upon the purchase of the new vehicle from the dealer. In addition, like the situation at hand, the leasing company had a contract that required it to purchase a new vehicle within nine months of the advance trade-in. Notably, in Private Letter Ruling ST-05-0008 PLR (8/25/2005), the Department again generally recognized that an advance trade-in could be used in relation to vehicles traded-in to dealers. However, the situation herein is more straight forward than in ST-05-0008, since the Company is not selling the vehicle through an auction, but is trading-in the vehicle directly to the dealer. The dealer is then reselling the vehicle at auction, after the trade-in occurs. The auction sale is solely relevant to determine the used car's trade-in value that is owed by the dealer to the Company.³

As the Department's regulation and past opinions instruct, the advanced trade-in transaction set forth in this letter appears to meet all of the requirements of Regulation 130.455(d). A Summary Chart of the sale and trade-in transactions is attached as Exhibit D. As a result, we ask that you issue a private letter ruling confirming that the transaction qualifies as an advance trade-in for Illinois Use Tax purposes.

If you have any questions, need any additional documents or facts, or contemplate issuing a private letter ruling different from that requested above, please call. Thank you again for your time and consideration of this matter.

DEPARTMENT'S RULING:

There are generally two types of trade-ins recognized in this State for sales tax purposes. The first type of trade-in is the traditional "simultaneous trade-in" whereby the trade-in and retail sale occurs at the same time. If no trade-in was taken at the time of the transaction, then the transaction cannot later be changed to create a trade-in for sales tax purposes.

The second type of trade-in regarding vehicles is the "advance trade-in" created by Section 130.455(d) of the Department's Administrative Rules. A transaction may constitute an advance trade-in if, at the time the vehicle is traded to the dealer, the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advance trade-in transaction. 86 Ill. Adm. Code 130.455(d). As provided in subsection (d)(3) of Section 130.455, documentation evidencing an advance trade-in transaction must include the following: The contract establishing the value of or credit given for a traded-in vehicle, the obligation to purchase a vehicle, and the date of expiration of the advance trade-in credit; the bill of sale for the traded-in vehicle; and the appropriate sales or use tax return evidencing the purchase of the new or used vehicle and recording the application of the advance trade-in credit. Advance trade-in transactions may not be structured so that the purchaser is not the owner of the automobile offered for trade. 86 Ill. Adm. Code 130.455(d)(3).

Based on the information contained in your Private Letter Ruling request and our understanding that the purchases of the new automobiles from the automobile manufacturers are being made by the dealerships under the Fleet Purchase Agreement, the transactions described in this Ruling by COMPANY qualify as advance trade-ins under Section 130.455 of the Departments Administrative Rules.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

TDC:msk

¹ Because the parties stipulated that the trade-in price shall be determinable at auction, by law a fixed price for the vehicle is deemed set forth in the contract for sale and bill of sale. Under the Uniform Commercial Code, a sale will be considered as consummated and enforceable even if the price term is fixed by a future market price or some future agreed to price calculation. 810 ILCS 5/2-305. This type of valuation has already been approved by the Department. ST 04-0164-GIL (9/14/04).

² While irrelevant for sales/use tax purposes, to accomplish an I.R.C. §1031 like kind exchange for federal tax purposes, the Company has transferred its rights to the dealer's cash credit payment under the Master Sales Agreement to its nominee, the QI. This nominee is purely an agent of the Company for I.R.C. §1031 purposes, it has no financial obligations with respect to the vehicles, and the 'titles' to the vehicles are never transferred to nor run through the nominee. (*See JI Aviation, Inc. v. Zehnder*, 335 Ill. App. 3d 905 (1st Dist. 2002).

³ See Footnote 1.