

This letter provides a general discussion of claim for credit procedures. See 86 Ill. Adm. Code 130.1501. (This is a GIL.)

June 24, 2015

Dear Mr. XXXX:

This letter is in response to your letter dated April 4, 2014, 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:

I represent Mr. YYYY and am authorized to write this letter on his behalf. In March 2007, Mr. YYYY purchased a BRAND boat from COMPANY. Mr. YYYY alleged that the boat leaked, and Mr. YYYY filed a lawsuit for monetary damages. The parties confidentially settled the lawsuit whereby, instead of COMPANY compensating Mr. YYYY for his damages, COMPANY agreed to provide Mr. YYYY with a new boat and transfer the accessories (e.g., motors, batteries, console, seat box, etc.) from the old boat to the new boat. The settlement agreement contains a confidentiality clause. However, if you request a copy, I believe I would be justified in providing one to you.

The sales tax at issue is with regard to the compensation Mr. YYYY received pursuant to a settlement agreement. He paid taxes on the initial boat purchase. I do not think it is appropriate for him to have to pay sales tax on his settlement award, which is in effect what is happening. I respectfully request a “Letter Ruling” concluding that no sales tax is due regarding this “new boat” because it is a settlement award I [sic] a lawsuit. If you require any additional information, please feel free to contact me. Thank you.

#### **DEPARTMENT’S RESPONSE:**

Please refer to 86 Ill. Adm. Code 130.1501 on our website, which describes the procedures used to obtain claims for credit or refunds for taxes that were erroneously paid. Only persons who have actually paid taxes to the Department can file claims for credit or refund. In retail sales of boats, these persons would be the dealers who remitted the taxes to the State. Claimants must establish

such taxes were paid through mistakes of fact or errors of law. The Department is only authorized to approve credits for claimants who clearly establish they have borne the burden of taxes erroneously paid or that they have unconditionally repaid the taxes to the vendees from whom they collected such taxes.

If boat dealers pay tax erroneously to the Department, then only such boat dealers may file and receive claims for credit. Retailers, including boat dealers, are not required under Illinois law to file claims for credit. Whether boat dealers do file such claims is a business decision on their part. If, however, Use Tax was paid directly to the Department by the purchaser, the purchaser may file a claim for credit.

The tax implications of the settlement of the type discussed here will depend on how the return of the defective boat was structured. In general, if a retailer refunds the purchase price of a defective boat to a customer (including the tax, if originally collected by the retailer), and the customer then purchases a second boat, then whoever paid tax to the Department for the first boat could file an amended return regarding the first boat and thereby claim a credit or refund of the tax paid on the first boat. If, however, the retailer accepted the original boat as a trade-in for the new boat, then no claim for credit or refund could be filed on the sale of the first boat. However, the gross receipts subject to tax on the second boat would be reduced by the amount allowed for the trade-in of the first boat.

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