

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.2125 Retailer's Occupation Tax
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Section 130.2125 Discount Coupons, Gift Situations, Trading Stamps, Automobile Rebates and Dealer Incentives

a) Application of Tax

1) Application of Retailers' Occupation Tax

A retailer incurs Retailers' Occupation Tax on its *gross receipts* from sales, which is defined as the *total selling price of a sale*. Under Section 1 of the Retailers' Occupation Tax, *selling price* means *the consideration for a sale valued in money, whether received in money or otherwise, including cash, credits, property, other than as provided in the statutory definition, and services*. [35 ILCS 120/1] The source of the consideration received by a retailer is immaterial in determining the gross receipts subject to tax. (See *Ogden Chrysler Plymouth, Inc. v. Bower*, 348 Ill.App.3d 944 (2004).) In holding that the payments made by DaimlerChrysler Motor Corporation to an auto dealer as part of a purchase of an automobile by an employee under an employee vehicle purchase program were includable in gross receipts, the court stated that the definitions of gross receipts and selling price "do not limit gross receipts or consideration to that received only from the purchaser". See also *Keystone Chevrolet Co. v. Kirk*, 69 Ill.2d 483 (1978). Consequently, if a retailer allows a purchaser a discount from the selling price on the basis of a discount coupon, the retailer's gross receipts subject to tax depends upon whether the retailer receives any reimbursement for the amount of the discount. (See subsection (b).)

2) Application of Complementary Use Tax

Use Tax is generally imposed on the selling price of tangible personal property purchased at retail. Since the Retailers' Occupation Tax Act and the Use Tax work together in a complementary manner (see 86 Ill. Adm. Code 150.130), Section 2 of the Use Tax Act contains the same definition of "selling price" as that found in Section 1 of the Retailers' Occupation Tax Act (i.e., *selling price means the consideration for a sale valued in money, whether received in money or otherwise, including cash, credits, property, other than as provided in Section 2 of the Use Tax Act, and services* [35 ILCS 105/2]). Whether discount coupons utilized by a purchaser for the purchase of tangible personal property constitute consideration for a sale depends upon whether the retailer receives any reimbursement for the amount of the discount. (See subsection (b).) If the retailer receives full or partial reimbursement for the amount of the discount, as explained in subsection (b), the amount of the discount that is reimbursed is considered to be part of the selling price of the sale. The purchaser incurs tax on the entire selling price, including the amount of the discount paid to the retailer by the issuer of the coupon.

b) Discount Coupons

1) Where the retailer receives no coupon reimbursement:

If a retailer allows a purchaser a discount from the selling price on the basis of a discount coupon for which the retailer receives no reimbursement from any source, the amount of the discount is not subject to Retailers' Occupation Tax liability. Only the receipts actually received by the retailer from the purchaser, other than the value of the coupon, are subject to the tax. For example, if a retailer sells an item for \$10 and the purchaser provides the retailer with a \$1 in-store coupon for which the retailer receives no reimbursement from the manufacturer of the item or any other source, the retailer's gross receipts of \$9 are subject to Retailer's Occupation Tax.

2) Where the retailer receives full or partial coupon reimbursement:

A) If a retailer allows a purchaser a discount from the selling price on the basis of a discount coupon for which the retailer will receive full or partial reimbursement (from a manufacturer, distributor or other source), the retailer incurs Retailers' Occupation Tax liability on the receipts received from the purchaser and the amount of any coupon reimbursement. For example, if a retailer sells an item for \$15 and the purchaser provides the retailer with a \$5 manufacturer's coupon for which the retailer receives full reimbursement from the manufacturer of the item, the retailer's gross receipts of \$15 are subject to Retailers' Occupation Tax. The purchaser incurs tax on the \$15 selling price of the item, which includes the \$10 paid by the purchaser and the \$5 reimbursement paid to the retailer by the manufacturer of the item.

B) However, payments received by the retailer (from a manufacturer, distributor or other source) for handling charges or administrative expenses in processing coupons are not subject to the tax if those payments are clearly distinguished from coupon value reimbursement. In addition, if the retailer receives a discount from a manufacturer, distributor or other source when purchasing tangible personal property for resale, and, pursuant to a contract with that manufacturer, distributor or other source, the retailer issues discount coupons applicable to the sale of property, the coupons shall not be deemed to be reimbursed by the manufacturer, distributor or other source.

c) Gift Situations

1) Where a retailer, manufacturer, distributor, or other person, issues a coupon that entitles the bearer to obtain an item of tangible personal property free of any charge whatever and not conditioned on the purchase of other property, the furnishing of the tangible personal property does not constitute a sale under the Retailers' Occupation Tax Act and the retailer does not incur Retailers' Occupation Tax liability with respect to the transfer. However, the retailer, manufacturer or distributor, or other person, issuing a coupon, as donor, incurs Use Tax liability on his cost price of all tangible personal property actually transferred as a result of the coupon. (See Subpart C of the Use Tax Regulations (86 Ill. Adm. Code 150).)

2) If a bearer (customer) presents a retailer with a coupon issued by the retailer that entitles the bearer to a free item and the coupon is not conditioned on a purchase, the retailer incurs Use Tax based upon its cost price of the item given

away. However, if a bearer (customer) presents a retailer with a coupon issued by the manufacturer that entitles the bearer to a free item and the coupon is not conditioned on a purchase by the customer, the manufacturer incurs Use Tax based upon its cost price of the item given away. However, in many cases, the manufacturer incorporates language into the coupon that requires the bearer (customer) to assume this Use Tax liability.

d) Trading Stamps

Persons who engage in the business of transferring tangible personal property upon the redemption of trading stamps shall be deemed to be engaged in the business of selling tangible personal property at retail and shall be liable for and shall pay the tax imposed by the Retailers' Occupation Tax Act on the basis of the retail value of the property transferred upon redemption of stamps. When merchandise is paid for partly in cash and partly by surrendering a trading stamp valued at a specific amount, the total amount (including the value of the surrendered trading stamp) is subject to Retailers' Occupation Tax.

e) Automobile Rebates

1) If an automobile dealer accepts a manufacturer's rebate provided by a customer as part of the payment for the retail sale of an automobile or other type of vehicle, the amount of the reimbursement or payment paid by the manufacturer to the dealer is part of the taxable gross receipts received by the dealer for the sale of that automobile or other type of vehicle.

2) Automobile Rebate Examples:

EXAMPLE 1 (taxable – customer applies rebate amount to purchase price): An automobile manufacturer offers a \$1,000 rebate to purchasers of certain automobiles at or near the end of a model year. The dealer sells one of the qualifying vehicles to a customer for \$30,000. The customer has the option of receiving the payment from the manufacturer for the rebate or assigning the rebate to the purchase price of the vehicle. The customer chooses to apply the \$1,000 rebate amount to the purchase price of the vehicle. Since the dealer will receive a payment from the manufacturer of \$1,000 and \$29,000 from the customer, the taxable gross receipts received by the dealer for this sale are \$30,000.

EXAMPLE 2 (not taxable – customer does not apply rebate amount to purchase price): An automobile manufacturer offers a \$1,000 rebate to purchasers of certain automobiles at or near the end of a model year. The dealer sells one of the qualifying vehicles to a customer for \$30,000. The customer has the option of receiving the payment from the manufacturer for the rebate or assigning the rebate to the purchase price of the vehicle. The customer does not choose to apply the \$1,000 rebate amount to the purchase price of the vehicle and instead chooses to keep the amount of the rebate. Since the dealer will receive \$30,000 from the customer and no payment from the manufacturer, the taxable gross receipts received by the dealer for this sale are \$30,000.

f) Automobile Dealer Incentives

1) This subsection (f) is effective for sales made on and after July 1, 2008. The taxation of automobile dealer incentives will depend upon whether the dealer receives a payment from a source other than the purchaser that is conditioned upon the retail sale of an automobile. If an automobile dealer receives a payment as an incentive for the retail sale of an automobile, the amount of that reimbursement or payment is part of the taxable gross receipts received by the dealer for the sale of that automobile. If a dealer receives payment in exchange for the purchase of an automobile from a supplier or manufacturer, and that payment is not conditioned upon the sale of that automobile to a retail consumer, the amount of that payment is not part of the taxable gross receipts received by the dealer for the retail sale of that automobile. The determination of taxability under the provisions of this subsection (f)(1) is not dependent on whether the retailer is required to lower the selling price of the vehicle as a condition for receiving the incentive payment. Notwithstanding the provisions of this subsection (f)(1), the payment is not part of the taxable gross receipts from a retail sale if, at the time of the retail sale, the payment is contingent on the dealer making or having made any additional retail sales. In addition, a dealer incentive or bonus contingent on the dealer meeting certain manufacturer required marketing standards, facility standards, or sales and service department satisfaction goals is not part of the taxable gross receipts from a retail sale of vehicles sold by that dealer, even if the incentive or bonus is calculated using the gross receipts, Manufacturer's Suggested Retail Price (MSRP), or a flat amount per vehicle.

2) Automobile Dealer Incentive Examples:

EXAMPLE 1 (taxable incentive payments – payment conditioned on the retail sale): An automobile manufacturer offers a dealer incentive (sometimes referred to as "dealer cash") of \$1,000 for each of a specific type of automobile sold to a retail customer during the month of March. An automobile dealer sells that type of a vehicle to a retail customer for \$38,000 during the month of March. The retail sale of that vehicle qualifies the dealer for the manufacturer's dealer incentive payment of \$1,000 for the retail sale of that vehicle. The purchaser pays the dealer \$38,000 and the dealer receives \$1,000 from the manufacturer. Since the \$1,000 payment is conditioned only upon the sale of that vehicle and is not conditioned upon the sale of any other vehicle or vehicles, the taxable gross receipts received by the dealer for this sale are \$39,000.

EXAMPLE 2 (nontaxable incentive payments – payment conditioned on the retail sale, but only after a certain number of sales have been made): An automobile manufacturer offers a dealer incentive payment (sometimes referred to as "dealer cash") of \$1,000 for each of a specific type of automobile sold to a retail customer in the month of March, but only if the dealer sells at least 15 of that type of vehicle during that month. An automobile dealer sells that type of vehicle to a retail customer for \$38,000 on March 25. The dealer had sold 14 of that type of vehicle earlier that month and the sale on March 25 qualified the dealer for the \$1,000 manufacturer payment on that sale and each of the 14 previous sales. The gross receipts from the sale on March 25 are \$38,000 and the \$1,000 manufacturer's payment is not part of the dealer's gross receipts from that sale. In addition, the \$14,000 payment to the dealer for the sales of the previous 14 vehicles was contingent upon the sale of other vehicles and is not part of the gross receipts from the sales of those vehicles. If the dealer sold a

vehicle on March 26 and qualified for another \$1,000 manufacturer payment for that sale, the \$1,000 manufacturer payment would not be part of the dealer's gross receipts from that sale.

EXAMPLE 3 (non-taxable dealer hold-backs – payment not conditioned on the retail sale): A manufacturer provides dealer hold-back payments to its automobile dealers of 3% of the invoice price of each vehicle purchased from that manufacturer. The dealer hold-back payments are paid to the dealer on a quarterly basis regardless of whether that dealer has sold at retail one or more of the vehicles it had purchased that quarter. The dealer purchases a vehicle from the manufacturer at the beginning of the month for an invoice price of \$39,000 and then sells that vehicle 10 days later at retail for \$40,000. The manufacturer of that vehicle pays an amount to the dealer of \$1,170 (3% of the invoice price of \$39,000) at the end of the quarter as a dealer hold-back for that vehicle. Since the \$1,170 hold-back payment to the dealer from the manufacturer is conditioned only on the purchase of the vehicle from the manufacturer (not on the subsequent retail sale of the vehicle), the taxable gross receipts received by the dealer for this sale are only \$40,000.

EXAMPLE 4 (non-taxable – payment not conditioned on the retail sale): An automobile dealer normally offers a specific type of vehicle for retail sale for \$40,000. The manufacturer of that vehicle agreed to pay an incentive to the dealer of \$3,000 for each of that type of vehicle that the dealer purchased for resale from the manufacturer during a specified promotional period. After purchasing the vehicle during the qualifying period, the dealer offered the vehicle for sale at a reduced or discounted price of \$37,000. A retail purchaser agrees to purchase the vehicle for \$37,000. Since the \$3,000 incentive provided to the dealer from the manufacturer is conditioned only on the dealer's purchase of the vehicle from the manufacturer (not on the subsequent retail sale of the vehicle), the taxable gross receipts received by the dealer for this sale are \$37,000.

EXAMPLE 5 (non-taxable performance bonus payments): An automobile manufacturer establishes a performance bonus program for automobile dealers who obtain a certain customer service index (CSI) score that demonstrates a substantial degree of satisfaction from their sales and service customers. Upon meeting the requirement, the automobile dealer will receive an incentive payment from the manufacturer calculated as 2% of the MSRP of the vehicles sold by that dealer during the incentive period. Because the bonus is contingent on the dealer meeting certain customer satisfaction goals as indicated by the CSI score, the manufacturer's performance bonus would not be part of the gross receipts received by that dealer for the sales of those vehicles.

EXAMPLE 6 (non-taxable marketing or facility incentive payments): An automobile manufacturer creates an incentive program for automobile dealers who meet certain marketing standards or facility standards designed to increase sales and brand loyalty. Upon meeting the standards, the automobile dealer will receive an incentive payment from the manufacturer calculated as a flat amount of \$500 per vehicle sold by the dealer during the incentive period. Because the incentive is contingent on the dealer meeting certain marketing or facility standards set by the manufacturer, the \$500 incentive payments would not be part of the gross receipts received by that dealer for the sales of those vehicles.

(Source: Amended at 39 Ill. Reg. 12597, effective August 26, 2015)