

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3)

<u>Section Numbers:</u>	<u>Emergency Actions:</u>
130.425	Amendment
130.455	Amendment
- 4) Statutory Authority: 35 ILCS 120/1; 35 ILCS 120/12; 20 ILCS 2505/2505-795
- 5) Effective Date of Emergency Amendments:
- 6) If these Emergency Amendments are to expire before the end of the 150-day period, please specify the date on which they are to expire: There is no specific date on which the Emergency Amendments will expire before the end of the 150-day period.
- 7) Date filed with the Index Department:
- 8) A copy of the emergency amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Reason for Emergency: The guidance provided in the emergency amendment regarding the trade-in credit limitation on the trade-in of first division motor vehicles applies to sales of motor vehicles beginning on January 1, 2020. Although the Department of Revenue published Informational Bulletin FY 2020-1 in September 2019 regarding this issue, an organization representing automobile dealers as well as the Illinois Secretary of State's Office recently had additional inquiries and it became clear that the Department could not rely on existing information about vehicle registrations to delineate which vehicles are subject to the trade-in credit limitation, but must itself provide specific guidance on what constitutes a first division motor vehicle subject to the limitation. As a result of these inquiries, the Department posted a "Frequently Asked Questions" document on its website on December 20, 2019 and is filing this emergency rulemaking in order to put in place binding guidance on this issue that both taxpayers and Department employees can rely on.
- 10) A Complete Description of the Subjects and Issues Involved: This rulemaking implements the provisions of P.A. 101-31 that, effective with sales made on or after January 1, 2020, imposes a \$10,000 limit on the credit allowed to reduce the taxable selling price when a first division motor vehicle is traded in on the purchase of another motor vehicle.
- 11) Are there any proposed rulemakings to this Part pending? Yes

<u>Section Numbers</u>	<u>Proposed Actions</u>	<u>Illinois Register Citations</u>
130.330	Amendment	43 Ill Reg. 13190, November 15, 2019
130.1957	New Section	43 Ill Reg. 13190, November 15, 2019

- 12) Statement of Statewide Policy Objectives: This rulemaking does not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.
- 13) Information and questions regarding this emergency rule shall be directed to:

Samuel J. Moore
Illinois Department of Revenue
101 West Jefferson
Springfield, Illinois 62794

(217) 782-2844

The full text of the Emergency Amendments begins on the next page:

Section 130.425 Traded-In Property
EMERGENCY

- a) "Gross receipts" means the "selling price" or "amount of sale". "Selling price" or the "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but, prior to January 1, 2020, not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold; beginning January 1, 2020, "selling price" includes the portion of the value of or credit given for traded-in motor vehicles of the first division as defined in Section 1-146 of the Illinois Vehicle Code of like kind and character as that which is being sold that exceeds \$10,000. "Selling price" shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever. "Selling price" does not include charges that are added to prices by sellers on account of the seller's tax liability under any local occupation tax administered by the Department, or on account of the seller's duty to collect, from the purchasers, the tax that is imposed under any local use tax administered by the Department [35 ILCS 120/1]. Local occupation and use taxes administered by the Department include, but are not limited to, the Retailers' Occupation Tax Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act, or on account of the seller's tax liability under the Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1], the Non-Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1.3], the Home Rule County Retailers' Occupation Tax Act [55 ILCS 5/5-1006], Section 4 of the Water Commission Act of 1985 [70 ILCS 3720/4], Section 5.01 of the Local Mass Transit District Act [70 ILCS 3610/5.01] and Section 4.03 of the Regional Transportation Authority Act [70 ILCS 3615/4.03].
- b) The phrase "like kind and character" includes, but is not limited to, the trading of any kind of motor vehicle on the purchase of any kind of motor vehicle, or the trading of any kind of farm implement on the purchase of any kind of farm implement, while not including a kind of item which, if sold at retail by that retailer, would be exempt from Retailers' Occupation Tax and Use Tax as an isolated or occasional sale.
- c) A motor vehicle traded to a farm implement dealer for a farm implement would not qualify for the exemption unless such farm implement dealer is also a motor vehicle dealer because the farm implement dealer's sale of the motor vehicle would be exempt as an isolated or occasional sale. A farm implement traded to a motor vehicle dealer for a motor vehicle would not qualify for the exemption unless such dealer is also a farm implement

dealer because the motor vehicle dealer's sale of the farm implement would be an exempt isolated or occasional sale. A farm implement traded for a motor vehicle, or a motor vehicle traded for a farm implement, would qualify for the exemption if the seller is engaged in business both as a motor vehicle dealer and a farm implement dealer. Agricultural produce or animals traded for a motor vehicle or for a farm implement would not qualify for the exemption.

- d) The real test is whether the retail sale of the traded-in tangible personal property by the person who accepts it in trade would be subject to Retailers' Occupation Tax, or whether such sale would be exempt as an isolated or occasional sale (see Section 130.110). In the former event, the tangible personal property qualifies for the trade-in exemption. In the latter event, it does not.
- e) Except for first division motor vehicles, as discussed in subsection (j), the value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale, where the item that is traded-in is of like kind and character as that which is being sold, shall not be considered to be "gross receipts" subject to the Retailers' Occupation Tax and need not be included in the seller's return, or may be deducted in the return from gross receipts if included in gross receipts as reported in the return. The value of traded-in real estate or intangible personal property is not deductible from gross receipts in computing Retailers' Occupation Tax liability.
- f) The Retailers' Occupation Tax applies to the business of selling tangible personal property at retail in this State whether such property is new or used and regardless of how the seller may have acquired such property (i.e., by way of purchase, as a trade-in or in some other manner).
- g) No trade-in credit may be taken for amounts representing the proceeds due or paid under an insurance contract if title to missing, damaged or destroyed property is transferred to an insurer by operation of law or contract, i.e., the insurance claim value of property may not be used as a trade-in credit when an insured purchases tangible personal property to replace property which has been lost or destroyed.
- h) No trade-in credit may be taken for that portion of the purchase price of a new automobile representing a settlement which the purchaser has obtained from an automobile manufacturer pursuant to the New Vehicle Buyer Protection Act [815 ILCS 380].
- i) When tangible personal property is sold that is covered by a "core charge," the full retail selling price of such property, including the core charge, is subject to Retailers' Occupation Tax. The fact that a component of the gross receipts from the sale of the tangible personal property is labeled a "core charge" does not change the taxable nature of the transaction. A core charge is regarded as a predetermined trade-in value. Tax should be charged on the core charge, but a deduction may be taken for the traded-in tangible personal property actually received after the date of sale if books and records clearly relate the trade-in to the sales transaction. Such a situation would occur when the replacement property is purchased prior to the time the used property is returned. If, on the other hand, the used property is traded in at the time of purchase, tax is due on the purchase price, less the allowance for the trade-in.
- j) Traded-in first division motor vehicles. Beginning January 1, 2020, the trade-in credit may not be taken for that portion of the value of or credit given for a traded-in motor vehicle of the first division, as defined in Section 1-146 of the Illinois Vehicle Code, of like kind and

character as that which is being sold that exceeds \$10,000 [35 ILCS 120/1]. This means that \$10,000 is the maximum credit a retailer may take on the return to reduce the taxable selling price of a motor vehicle when he or she accepts the trade-in of a first division motor vehicle in the transaction, regardless of the value of or credit given for the trade-in. This does not prohibit the retailer from reducing the price of the vehicle being sold by the value of or credit given for the traded-in motor vehicle. It only limits the credit the retailer may take on the return for that trade-in.

- 1) Definitions. For purposes of this subsection (j),
 - A) “Vehicle” means every device (i) in, upon, or by which any person or property is or may be transported or drawn upon a highway or (ii) requiring a certificate of title under Section 3-101(d) of the Illinois Vehicle Code. However, “vehicle” does not include junk vehicles, devices otherwise prescribed in the Illinois Vehicle Code, devices moved by human power, devices used exclusively upon stationary rails or tracks, or snowmobiles as defined in the Snowmobile Registration and Safety Act [625 ILCS 5/1-217].
 - B) “Devices requiring a certificate of title under Section 3-101(d) of the Illinois Vehicle Code” means all-terrain vehicles and off-highway motorcycles purchased on or after January 1, 1998 [625 ILCS 5/3-101(d)].
 - C) “Motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power, motorized wheelchairs, low-speed electric bicycles, and low-speed gas bicycles. Motor vehicles are divided into two divisions: first division and second division [625 ILCS 5/1-146].
 - D) “First division motor vehicle” means a motor vehicle that is designed for the carrying of not more than 10 persons [625 ILCS 5/1-146].
 - E) “Second division motor vehicle” means: (i) a motor vehicle designed for carrying more than 10 persons, (ii) a motor vehicle designed or used for living quarters, (iii) a motor vehicle designed for pulling or carrying freight, cargo, or implements of husbandry, and (iv) a motor vehicle of the first division remodeled for use and used as a motor vehicle of the second division [625 ILCS 5/1-146].
- 2) Items that are first division motor vehicles. Traded-in first division motor vehicles are subject to the \$10,000 limit on the trade-in credit. First division motor vehicles generally consist of most standard passenger cars. This includes most sport utility vehicles (“SUVs”) that are enclosed and designed primarily for passengers, regardless of whether the SUV is registered as a passenger vehicle, registered as a Class B vehicle under Section 3-815 of the Illinois Vehicle Code, or registered in some other way. In addition, devices requiring a certificate of title, such as all-terrain vehicles (“ATVs”) and off-highway motorcycles are first division motor vehicles. To aid in the determination of whether a traded-in motor vehicle is a first division motor vehicle, the following is a non-exhaustive list of first division motor vehicles:

- A) Motor vehicles designed for carrying not more than 10 persons. This category includes motor vehicles designed as passenger vehicles, but whose seats have been removed, such as a minivan with the seats removed. This is in contrast to a motor vehicle that is designed for pulling or carrying property, freight, or cargo, such as a panel van, which is a second division motor vehicle.
 - B) SUVs designed for carrying not more than 10 persons.
 - C) Motorcycles, both on-road and off-road.
 - D) ATVs.
- 3) Items that are second division motor vehicles. Second division motor vehicles that are traded in are not subject to the \$10,000 limit on the trade-in credit. Second division motor vehicles generally include open-bed vehicles (such as pickup trucks) and enclosed vehicles designed to carry cargo (such as panel vans). To aid in the determination of whether a traded-in motor vehicle is a second division motor vehicle, the following is a non-exhaustive list of second division motor vehicles:
- A) Motor vehicles designed for carrying more than 10 persons, including limousines, SUVs, transport vehicles, and any other passenger vehicle designed for carrying more than 10 passengers.
 - B) Motor vehicles designed or used for living quarters, such as RVs (recreational vehicles).
 - C) Motor vehicles designed for pulling or carrying property, freight, or cargo. This category includes open-bed vehicles, including, but not limited to, pickup trucks (even if the bed has been covered by a top of any kind) and side by side vehicles, also known as UTVs (utility vehicles), ROVs (recreational off-highway vehicles), and MOHUVs (multi-purpose off-highway utility vehicles), if they have an open bed (even if the bed has been covered by a top of any kind) or are otherwise designed for carrying property, freight, or cargo. This category also includes enclosed vehicles typically used commercially, such as panel vans or cargo vans.
 - D) School buses, including vehicles of the first division used and registered as school buses.
 - E) Ambulances, medical carriers, and hearses.
- 4) Examples. The following examples illustrate the trade-in credit allowed for the trade-in of the following vehicles.

EXAMPLE 1

A motor vehicle retailer sells a new car for \$40,000 and allows \$30,000 for the trade-in of a sport utility vehicle that seats 8 passengers. Since a sport utility vehicle that seats 8 passengers is a first division motor vehicle, the credit that the retailer may take on the return for the traded-in sport utility vehicle is \$10,000.

EXAMPLE 2

A motor vehicle retailer sells a new car for \$40,000 and allows \$30,000 for the trade-in of a pickup truck. Since a pickup truck is a second division motor vehicle, the credit that the retailer may take on the return for the traded-in pickup truck is \$30,000.

EXAMPLE 3:

A motor vehicle retailer sells a new motorcycle for \$30,000 and allows \$20,000 for the trade-in of a motorcycle. Since a motorcycle is a first division motor vehicle, the credit that the retailer may take on the return for the traded-in motorcycle is \$10,000.

EXAMPLE 4:

A motor vehicle retailer sells a new limousine for \$60,000 and allows \$30,000 for the trade-in of a limousine that seats 10 passengers. Since a limousine that seats 10 passengers or less is a first division motor vehicle, the credit that the retailer may take on the return for the traded-in limousine is \$10,000.

EXAMPLE 5:

A motor vehicle retailer sells a new limousine for \$60,000 and allows \$30,000 for the trade-in of a limousine that seats 11 passengers. Since a limousine that seats 11 passengers or more is a second division motor vehicle, the credit that the retailer may take on the return for the traded-in limousine is \$30,000.

(Source: Emergency amendment at 44 Ill. Reg 552, effective December 23, 2019, for a maximum of 150 days)

Section 130.455 Motor Vehicle Leasing and Trade-In Allowances

EMERGENCY

a) Definitions

“Advance Trade Credit” means a trade-in credit earned as the result of the trade-in of a vehicle on the future purchase of a vehicle where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade.

“Dealer” means any person engaged in the business of selling vehicles at retail.

“Dealer Credit” means an advance trade credit maintained on the books of the dealer where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade.

“Lease” means a true lease of a vehicle for a term of more than one year.

“Lessee” means any person that acquires possession of a vehicle pursuant to a lease.

“Lessor” means any person engaged in the business of leasing vehicles to other persons.

“Purchaser” means any person, whether an individual consumer or a lessor, that purchases a vehicle from a dealer.

b) Valuation of Traded-in Vehicles; \$10,000 Limit on Credit Allowed for Traded-in Motor Vehicles of the First Division

- 1) Except for traded-in motor vehicles of the first division as provided in subsection (b)(3), the selling price of a vehicle does not include *the value of or credit given* for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold. *The value of* a traded-in vehicle is the amount of value assigned to the vehicle without regard for outstanding debt owed on the traded-in vehicle by any party. (Section 1 of the Act)
- 2) Except for traded-in motor vehicles of the first division as provided in subsection (b)(3), the amount of *credit given* for a traded-in vehicle is the value assigned to the vehicle, reduced by any cash payments received by the purchaser or title holder of the traded-in vehicle. The reduction of the value by offsetting cash payments results in the actual *credit given* for the traded-in vehicle. Where cash payment is made to the purchaser or the title holder of the traded-in vehicle, the trade-in credit is equal to the actual *credit given* for the vehicle. (Section 1 of the Act)

Example:

	Value of Trade-In	Credit Given	Trade- In Credit
Trade-In Vehicle	\$10,000		\$10,000
With \$3,000 Lien	\$10,000		\$10,000
With \$2,000 Cash Back to Purchaser	\$10,000	\$8,000	\$8,000

- 3) Notwithstanding subsections (b)(1) and (b)(2), *beginning January 1, 2020, "selling price" includes the portion of the value of or credit given for traded-in motor vehicles of the First Division as defined in Section 1-146 of the Illinois Vehicle Code of like kind and character as that which is being sold that exceeds \$10,000.* (Section 1 of the Act) On and after January 1, 2020, the full value of any trade-in may still be used to reduce the price of an item purchased; however, the trade-in credit taken on the return for the trade in of a first division motor vehicle is limited to \$10,000.

Example:

Value Traded-In First Division	of Credit Given	Trade- In Credit
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	Motor Vehicle			
Trade-In Vehicle	\$20,000	\$20,000	\$10,000	
With \$3,000 Lien	\$20,000	\$20,000	\$10,000	
With \$2,000 Cash Back to Purchaser	\$20,000	\$18,000	\$10,000	

c) Use of Trade-in Credits

- 1) Subject to the \$10,000 limit on the reduction allowed for the trade in of a first division motor vehicle (see subsection (b)(3)), a dealer may reduce his gross receipts by the *value of or credit given* for a traded-in motor vehicle where: (Section 1 of the Act)
 - A) An individual trades a motor vehicle he owns on the purchase of a new or used motor vehicle;
 - B) A lessor trades a motor vehicle he owns on the purchase of a new or used motor vehicle for subsequent lease;
 - C) A lessor or other purchaser trades a motor vehicle owned by a prospective lessee or a third party where the prospective lessee or third party assigns the vehicle to the dealer and provides written authorization for the trade to the dealer, for the benefit of the lessor or other purchaser. The written authorization provided by the prospective lessee or third party should be specific to the immediate transaction, identifying the vehicle to be purchased by the lessor or other purchaser. A prospective lessee or third party trade-in authorization may not be used in conjunction with an advance trade transaction; or
 - D) A motor vehicle is traded-in as described in subsection (c)(1)(B) or (c)(1)(C) of this Section, and the dealer executes the lease but assigns the lease to a purchasing lessor, if the following requirements are part of the transaction:
 - i) the lease agreement states that the lease and vehicle will be assigned to the lessor making the trade of the motor vehicle, and
 - ii) title is issued directly to the lessor making the trade of the motor vehicle and not to the dealer so that the dealer remains outside the chain of title.
- 2) A dealer may not reduce his gross receipts by the *value of or credit given* for a traded-in motor vehicle where: (Section 1 of the Act)

- A) The dealer is the owner (meaning the dealer holds either title or certificate of origin) of the traded-in motor vehicle;
- B) The trade-in vehicle was disposed of in a sales transaction predating the trade but was not identified by contract or written agreement as an advance trade-in vehicle as required in subsection (d) of this Section; or
- C) The party holding title and offering the vehicle or vehicles for trade on behalf of another purchaser or lessor, as described in subsection (c)(1)(C) of this Section, would not be entitled to the isolated or occasional sale exemption if such vehicle or vehicles were sold by that party, rather than traded.

d) Advance Trade-Ins

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. Advance trade credits not used within the time specified expire and may not be used subsequent to the 9 month credit period. Advance trade credits are non-transferable.

- 1) In order to apply the trade-in credit to reduce the taxable selling price of a vehicle, the documents recording the purchaser's contractual obligation to purchase need not specify the make, model or purchase price of a vehicle to be purchased, only that the purchaser is under an obligation to purchase within the specified amount of time.
- 2) Advance trade-in credit given by the dealer to the purchaser in the amount of the *value of or credit given* for a traded-in vehicle at the time of the advance trade-in may be in the form of dealer credit or cash, and will not affect the purchaser's ability to apply the advance trade credit to reduce the taxable selling price of one or more vehicles (subject to the \$10,000 limit on the reduction allowed for the advance trade-in of a first division motor vehicle (see subsection (b)(3)), so long as the purchaser is contractually obligated to purchase a vehicle from the dealer within the time specified. In completing the transaction, the purchaser may pay the dealer cash or other consideration for the purchase price of a vehicle or vehicles purchased. (Section 1 of the Act)
- 3) 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. (Section 1 of the Act)

e) Deferred Trade-Ins

No trade-in credit may be used in a transaction where the sales or use tax return does not reflect that a trade was offered at the time of the sales transaction. The appropriate sales or use tax return cannot be amended to reflect the *value of or credit given* for a vehicle offered for trade subsequent to the completion of the sales transaction. (Section 1 of the Act)

f) Multiple and Split Trade-in Transactions

1) Multiple Trade-In Transactions

A purchaser may utilize a trade-in credit when trading in more than one vehicle to a dealer on the purchase of a single new or used vehicle. The dealer may use the cumulative trade-in credits from the traded-in vehicles to reduce gross receipts from the sale of the newly purchased vehicle so long as the trade-ins and sale are recorded as a single transaction (subject to the \$10,000 limit on the reduction in gross receipts allowed for the trade in of each first division motor vehicle (see subsection (b)(3)).

EXAMPLE (trade-in of multiple first division motor vehicles)

A motor vehicle retailer sells a new car for \$60,000 and allows \$50,000 for the trade-in of 2 vehicles on the transaction: \$30,000 for the trade-in of one first division motor vehicle and \$20,000 for the trade-in of another first division motor vehicle. The credit that the retailer may take on the return for the traded-in first division motor vehicles is \$20,000 (\$10,000 for each vehicle).

2) Split Trade-In Transactions

A purchaser may utilize a trade-in credit when trading in a single vehicle to a dealer on the purchase of more than one new vehicle. The dealer may split the amount of the trade-in credit from the traded-in vehicle, and apply it toward the purchase price of one or more new vehicles so long as the trade-in and purchases are recorded as a single transaction. The amount of trade-in credit to be applied to each new vehicle will be determined by the dealer and purchaser (subject to the \$10,000 limit on the aggregate reduction in gross receipts allowed for the trade in of each first division motor vehicle (see subsection (b)(3)).

EXAMPLE (split trade-in of first division motor vehicle)

A motor vehicle retailer sells 2 new cars to the same purchaser, each for \$7,000, and allows \$12,000 for the trade-in of one first division motor vehicle. The aggregate credit that the retailer may take on both returns for the traded-in first division motor vehicle is \$10,000. The retailer may split the credit and apply it to each return (e.g., \$5,000 to each return or \$7,000 to one return and \$3,000 to the other), but the credit may not exceed \$10,000 in the aggregate for both returns.

3) Combined Transactions

A multiple trade-in transaction or split trade-in transaction may only be used in conjunction with an advance trade-in transaction if the transfer of all vehicles involved in the trade are recorded as a single transaction and the purchaser is contractually obligated to purchase a vehicle from the dealer within the specified period of time.

g) Documentation of Trade-in Credits

Documentation and records evidencing a trade-in credit utilized for a particular transaction must be retained by the dealer and the purchaser and shall be made available to the Department for inspection or audit. With the exception of advance trade-in transactions, where a vehicle is offered for trade by a person other than the purchaser for the benefit of the purchaser, the owner of the vehicle must give written authorization that the vehicle is being offered for trade for the benefit of the purchaser. The written

authorization must be specific to the transaction and must identify the vehicle for which the owner's vehicle is being traded.

(Source: Emergency amendment at 44 Ill. Reg 552, effective December 23, 2019, for a maximum of 150 days)