

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 425 TRADED-IN PROPERTY

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 130
RETAILERS' OCCUPATION TAX**

Section 130.425 Traded-In Property

- 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 when 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 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, except as otherwise provided with respect to any cigarette tax imposed by a home rule unit, on account of the seller's tax liability under any local occupation tax administered by the Department, or, except as otherwise provided with respect to any cigarette tax imposed by a home rule unit, 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.* (Section 1 of the Act) Local occupation and use taxes administered by the Department include, but are not limited to, 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], Section 4.03 of the Regional Transportation Authority Act [70 ILCS 3615/4.03], the Special County Retailers' Occupation Tax for Public Safety, Public Facilities, Mental Health, Substance Abuse, or Transportation Law [55 ILCS 5/5-1006.5(a)], the County School Facility and Resources Occupation Tax Law [55 ILCS 5/5-1006.7(a)], the County Cannabis Retailers' Occupation Tax Law [55 ILCS 5/5-1006.8], the Municipal Cannabis Retailers' Occupation Tax Law [65 ILCS 5/8-11-23], the County Motor Fuel Tax Law [55 ILCS 5/5-1035.1], and the Municipal Motor Fuel Tax Law [65 ILCS 5/8-11-2.3].
- 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.* (Section 1 of the Act) 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):

"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)]

"Motor vehicle" means *every vehicle that is self-propelled and every vehicle that 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]

"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]

"Second division motor vehicle" means:

a motor vehicle designed for carrying more than 10 persons;

a motor vehicle designed or used for living quarters;

a motor vehicle designed for pulling or carrying freight, cargo, or implements of husbandry; and

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]

"Vehicle" means every device:

in, upon, or by which any person or property is or may be transported or drawn upon a highway; or

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 40]. [625 ILCS 5/1-217]

- 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) Sales to purchasers from non-reciprocal states are subject to the \$10,000 trade-in credit limit. The \$10,000 limit on the credit allowed for traded-in first division motor vehicles applies regardless of whether the purchaser is an Illinois resident, unless the purchaser can claim the non-resident purchaser exemption as a resident of a reciprocal state found under 35 ILCS 120/2-5(25)]. Under 35 ILCS 120/2-5(25-5) residents of states other than Illinois may not claim the nonresident purchaser exemption on purchases of motor vehicles or trailers in Illinois that will be titled in a state that does not give Illinois residents a nonresident purchaser exemption on their purchases in that state of motor vehicles or trailers that will be titled in Illinois (i.e., the other state offers no reciprocal exemption to Illinois residents). These states are referred to as non-reciprocal states. The \$10,000 trade-in credit limit applies in sales to nonresident purchasers from nonreciprocal states. See ST-58, Reciprocal – Non-Reciprocal Vehicle Tax Rate Chart, to determine whether another state is non-reciprocal with Illinois. Note, however, that motor vehicles leased to nonresidents using drive-away permits or transferring out-of-state vehicle registration plates will be exempt, regardless of the purchaser's state of residence. Therefore, the trade-in credit limit does not impact these transactions.
- 5) Examples. The following examples illustrate the trade-in credit allowed

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: Amended at 44 Ill. Reg. 13975, effective August 11, 2020)