

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. See 86 Ill. Adm. Code 130.2010. (This is a GIL.)

February 15, 2022

Dear NAME:

This letter is in response to your letter dated September 16, 2021, in which you requested 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 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:

To whom it may concern;

Could you please forward me a Private Letter Rulings on whether leasing a signs [sic] would be considered Real Property of [sic] Tangible Personal Property and clarification of how taxes are to applied [sic].

Factual Background

BUSINESS is an out of State vendor supplying [sic] Identification signage to the clients (car dealers) in Illinois. These signs are car dealer branding and have no value to others.

Signs are affix [sic] directly to the building or installed on concrete base on anchor bolts.

Contracts between BUSINESS and customers are that BUSINESS retains ownership of all signs and leases them to the dealers.

Included in the lease to the dealers BUSINESS is responsible for all servicing and maintenance which may include repairs to broken or damaged parts, replacement of burned out bulbs, neon repair, ballasts or transformer replacements, cleaning/washing, or painting. BUSINESS provides the labor and parts necessary to repair the sign and bills the customer accordingly.

Issues

1. What are the Illinois State and Local sales tax consequences of the lease of the signs that qualifies as tangible personal property to BUSINESS and its customers?
2. What are the Illinois State and Local sales tax consequences of the lease of the signs that qualifies as Real Estate to BUSINESS and its customers?

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than most other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one-dollar purchase option at the close of the lease term. Stated differently, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax. A true lease generally has no buy out provision at the close of the lease. If a buyout provision does exist, it must be a fair market value buyout option in order to maintain the character of the true lease.

Based on the limited information provided, this response will address situations in which a true lease is in effect. In the event a taxpayer's transactions involving tangible personal property would be considered conditional sales, refer to 86 Adm. Code 130.2155 for more information on tax treatment.

In Illinois, persons who rent or lease tangible personal property under true leases are considered the users of the property which they rent or lease to others. Therefore,

the lessor incurs Use Tax on the cost price of the tangible personal property which is rented. See 86 Ill. Adm. Code 130.2010(b); 150.201; and 150.305(e). The lessor cannot charge the lessee a "tax", but many times lessors will require, in the lease agreement, that the lessee "reimburse" the lessor for the taxes which the lessor incurs on the leased tangible personal property.

Tangible personal property that construction contractors purchase to permanently affix or incorporate into real property in this State will also be subject to Use Tax. See 86 Ill. Adm. Code 130.1940(c). The liability of construction contractors who install signs is discussed at 86 Ill. Adm. Code 130.2155(d). The term construction contractor includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term contractor means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. A construction contract is a contract to construct a structure or to otherwise incorporate tangible personal property into real estate. See 86 Ill. Adm. Code 130.1940(a). In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940(c). If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department. If the contractors have already paid a tax in another state regarding the purchase or use of such property, they will be entitled to a credit against their Illinois Use Tax liability to the extent that they have paid tax that was properly due to another state. See 86 Ill. Adm. Code 150.310.

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as "sales tax," but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor's part.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Alexis K. Overstreet

BUSINESS/NAME

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