

When a car rental facilitation company operates a peer-to-peer motor vehicle sharing platform it is acting as a marketplace facilitator under marketplace facilitator provisions of the Automobile Renting Occupation and Use Tax Act, as incorporated from the Retailers' Occupation Tax Act. 35 ILCS 155/3, incorporating 35 ICLS 120/2(c) as fully as if set forth therein. (This is PLR.)

February 1, 2022

Dear NAME:

This letter is in response to your letter dated December 3, 2020, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY1, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY1, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

Please view this letter as a private letter ruling request as to the application of the Automobile Renting Occupation and Use Tax ("AROT" and "ARUT"), the Retailers' Occupation Tax ("ROT"), and Use Tax to a new peer-to-peer car rental facilitation company being considered by COMPANY1 ("COMPANY1"). Such a private letter ruling request is proper under 86 Ill. Admin. Code § 1200.110.

COMPANY1 is headquartered at ADDRESS. COMPANY1 operates a motor vehicle rental business throughout the State of Illinois at various locations. COMPANY1 is exploring the opportunity to create a peer-to-peer Car Rental Facilitation Company ("Car Rental Facilitation Company") that will allow private and commercial owners of motor vehicles to list their vehicles for rent to others through the Car Rental Facilitation Company's

peer-to-peer motor vehicle sharing platform. It is contemplated that the Car Rental Facilitation Company will operate similar to existing companies such as COMPANY2, COMPANY3 and COMPANY4.

The person listing the motor vehicle with the Car Rental Facilitation Company will generally be referred to as a "Host" (or similar designation) and such Hosts, often in consultation with the Car Rental Facilitation Company, will set their own daily, weekly or monthly rate. In some cases, a Host is an individual merely supplying his or her vehicle to the Car Rental Facilitation Company. In other instances, the Host is an individual or business owning a fleet of multiple cars supplying the vehicles. A person wanting to obtain a motor vehicle will do so through the Car Rental Facilitation Company's website or app. This person renting the motor vehicle will generally be called the "Guest" (or similar designation). The Car Rental Facilitation Company reviews and approves all Hosts and Guests before a rental can occur. Upon rental, the Host will deliver the motor vehicle to the Guest.

The Car Rental Facilitation Company may facilitate protection plans that the Hosts and/or Guest can purchase, which includes insurance protection for the motor vehicle by a third party insurer. The Car Rental Facilitation Company and/or the Hosts may charge other fees depending on options chosen by the Guest. The Car Rental Facilitation Company will maintain a payment platform to receive and process rental payments from the Guest and then pay the net revenue to the Host, minus the Car Rental Facilitation Company's share. The Car Rental Facilitation Company will normally receive anywhere from ##% to ##% of the rental payments for its share and charges.

The purpose of this letter ruling request is to obtain a letter ruling as to the applicability of the AROT, ARUT, ROT and Use Tax to the Car Rental Facilitation Company and the Hosts that list the motor vehicles with the Car Rental Facilitation Company. A power of attorney is enclosed.

No authority exists that is contrary to the positions expressed in this request for a private letter ruling. Nor are the issues in this request part of a current audit or litigation matter with the Illinois Department of Revenue ("IDOR") concerning COMPANY1 or any related company. There are no regulations that are clearly dispositive of the issues in this request.

To the best of the knowledge of both COMPANY1 and its representative, the IDOR has not previously ruled on the same or a similar issue for COMPANY1 or a predecessor. Neither COMPANY1 nor its representative has previously submitted the same or a similar issue to the IDOR but

withdrew it before a letter ruling was issued. And, there are no authorities that COMPANY1 or its representative are aware of that are contrary to the ruling request made herein by COMPANY1.

APPLICABLE LAW

The AROT imposes a tax on “persons engaged in this State [Illinois] in the business of renting automobiles in Illinois at a rate of 5% of the gross receipts from such business.” 35 ILCS 155/3. A rentor is a person “engaged in the business of renting or leasing automobiles to users.” 35 ILCS 155/2. Rental price means “the consideration for renting or leasing an automobile.” *Id.* The rentor can pass-through the AROT to the rentee and collect it as a separate charge. 86 Ill. Admin. § 180.125. The ARUT imposes a corresponding use tax on the rentee but it requires the rentor to collect from the rentee. 35 ILCS 155/4. A rentee is the “user” of the vehicle. 35 ILCS 155/2. The AROT and ARUT complement each other, so only one tax must be remitted to the IDOR for the same transaction. 86 Ill. Admin Code § 190.115.

Counties and municipalities may also impose a local automobile renting occupation tax on persons engaged in the business of renting automobiles within the county or municipality, as well as a complementary automobile renting use tax. 65 ILCS 5/8-11-7; 65 ILCS 5/8-11-8; 55 ILCS 5/5-1032; 65 ILCS 5/5-1033. Likewise, a special district, like the Metropolitan Pier and Exposition Authority (“MPEA”), can impose an automobile renting occupation tax on persons engaged in the business of renting automobiles in the special district area, as well as a complementary automobile renting use tax. See 70 ILCS 210/13.

The local and special district automobile renting taxes are collected and enforced by the IDOR along with the Illinois AROT or ARUT. The definitions, restrictions, conditions, limitations, penalties and modes of procedures of the Illinois AROT also apply to these local taxes. See e.g., 65 ILCS 5/8-11-7; 70 ILCS 210/13.

Under IDOR Regulation Section 180.115 a person that “habitually engages in renting automobiles” or “who in any manner or at any time, advertises, solicits, offers for rent or holds himself out to the public to be a rentor of automobiles” is considered “engaged in the business that is taxed by” the AROT and ARUT. 86 Ill. Admin. Code § 180.115. However, merely entering into an isolated or occasional rental transaction would not make a person a rentor subject to the AROT or ARUT. IDOR Reg. § 180.110.

As to the purchase of such a motor vehicle for rental, “a motor vehicle that is used for automobile renting,” as defined in the AROT and ARUT, is exempt from the ROT and Use Tax. 35 ILCS 120/2-5; 35 ILCS 105/3-5. However, if the motor vehicle is also used for personal or non-exempt purposes, it is our understanding that it has been the long adopted policy of the IDOR that if property is purchased free from ROT and Use Tax under an exemption, the property becomes taxable if the property is put to a “non-exempt use.” See, e.g., IDOR ST-87-800-PLR (11/2/97); ST-92-0538-PLR (10/16/92); FY 2002-02 (Sept 2001); 86 Ill. Admin. Code § 150.332(c). All of these IDOR authorities emphasize that if a purchaser or lessor claims a ROT or Use Tax exemption for property purchased and then uses the property purchased in a “non-exempt” manner the purchaser or lessor becomes liable for Illinois ROT or Use Tax on the use of such property. *Id.*

RULINGS REQUESTED

1. Is the Car Rental Facilitation Company required to pay or collect the Illinois or local AROT or ARUT on the rental of the Hosts’ motor vehicles?
2. Are the Hosts required to pay or collect the Illinois and local AROT or ARUT on the rental of the Hosts motor vehicles?
3. If either the Car Rental Facilitation Company or the Hosts remits the Illinois or AROT or ARUT to the IDOR, does that relieve the other party of liability to remit such taxes?
4. Are the Hosts only entitled to a ROT and Use Tax exemption for their purchase of motor vehicles that are subject to the AROT and ARUT, when such motor vehicles are exclusively used for that exempt purpose?
5. Are the Hosts not entitled to a ROT or Use Tax exemption for their purchase of motor vehicles that are subject to the AROT or ARUT, if the motor vehicles are substantially used for personal or other non-exempt purposes?

ANALYSIS

A. AROT AND ARUT

The AROT applies to persons engaged in the business of renting automobiles. 35 ILCS 155/3. Similarly, the ARUT requires a rentor, i.e. a

person “engaged in the business of renting or leasing automobiles to users” to collect the tax. It is unclear whether the Car Rental Facilitation Company is actually renting the automobile (as the AROT and ARUT is currently worded) to a rentee, so it is unclear whether it is subject to the AROT and ARUT. Rather, the Car Rental Facilitation Company may only be a facilitator of the rental.¹ Nevertheless, a Car Rental Facilitation Company in any event could volunteer or agree to pay the AROT and ARUT on behalf of their Hosts.

As to the Hosts’ rentals of motor vehicles, the Hosts would appear to be engaged in the business of renting (i.e. are “rentors”) if they advertise their rentals on the Car Rental Facilitation Company’s online booking platform per IDOR Regulation Section 180.115. Moreover, if such Hosts actually rent such motor vehicles more than just in an isolated or occasional transaction, the AROT or ARUT should apply. *Id.* Therefore, assuming a Host rents its motor vehicles periodically (or more than occasionally) throughout the year, it would appear that the Host is required to pay or collect the State and local AROT or ARUT on such transactions², unless the Car Rental Facilitation Company pays or remits the tax on such transactions. Please confirm if this is correct.

B. ROT and Use Tax

The ROT and Use Tax have an exemption for the purchase of a motor vehicle “that is used for automobile renting, as defined in the Automobile Renting Occupation and Use Tax Act.” 35 ILCS 120/2-5. Consequently, motor vehicles that are subject to the AROT or ARUT are exempt from the ROT and Use Tax. However, if the motor vehicle is not used exclusively for rentals subject to the AROT or ARUT, but rather is used substantially for personal use, then the ROT and Use Tax exemption would not appear to be available. See, e.g., IDOR ST-87-0800-PLR (11/2/87) (“if you purchase an item tax free under the exemption certificate, and then put the item to a non-exempt use, you should pay your tax liability directly to the Illinois Department of Revenue.”); 86 Ill. Admin. Code § 150.332(c) (if property “is used in a manner that does not qualify for the exemption or is used in any other non-exempt manner, the lessor is liable for the appropriate tax imposed under the Use Tax Act.”). Thus, like other ROT and Use Tax exemptions, this exemption only applies if the motor vehicle is used exclusively for exempt purposes and does not apply if the vehicle is used substantially for personal or other non-exempt purposes. As a result, please confirm whether a Host still owes ROT or Use Tax if it rents

¹ See, IDOR position on facilitators and hosts under the Hotel Operators Tax. ST 16-0001-PLR 01/13/2016 HOTEL OPERATORS’ TAX.

² See, footnote 1.

a motor vehicle subject to the AROT or ARUT, but then continues to substantially use the motor vehicle for personal use or other non-exempt use.

Thank you for your time and consideration of this matter. If you have any questions or concerns or need additional information in order to respond to this request, please do not hesitate to contact me.

DEPARTMENT'S RESPONSE:

Automobile Renting Occupation and Use Tax

Persons who are engaged in the business of renting automobiles in Illinois under rental terms of one year or less are subject to the Automobile Renting Occupation Tax set forth in Section 3 of the Automobile Renting Occupation and Use Tax Act. See 35 ILCS 155/1 et seq.; 86 Ill. Adm. Code 180.101. Section 180.115 of the Department's administrative rules for the Automobile Renting Occupation Tax provides that "[a]ny person who habitually engages in renting automobiles under lease terms of one year or less, or who, in any manner or at any time, advertises, solicits, offers for rent or holds himself out to the public to be a rentor of automobiles under lease terms of one year or less is engaged in the business that is taxed by the Act, provided that such person is engaged in such business in this State." See 86 Ill. Adm. Code 180.115. The Act defines "rentor" as "any person, firm, corporation or association engaged in the business of renting or leasing automobiles to users." The Act defines "renting" as "any transfer of the possession or right to possession of an automobile to a user for a valuable consideration for a period of one year or less." See 35 ILCS 155/2. This tax is imposed at the rate of 5% of the gross receipts from such business. "Gross receipts" from the renting of tangible personal property or "rent," means the total rental price or leasing price. See also, 86 Ill. Adm. Code 180.120 and 180.125.

A corresponding Automobile Renting Use Tax is imposed upon the privilege of using in Illinois an automobile rented from an automobile rentor under a lease term of one year or less. See 86 Ill. Adm. Code 190.101(a). The Act defines "rentee" as "any user to whom the possession, or the right to possession, of an automobile is transferred for a valuable consideration for a period of one year or less" See 35 ILCS 155/2. The rentor must remit the Automobile Renting Use Tax he collects to the Department, but first reduces what he must remit in this connection by the Automobile Renting Occupation Tax (if any) which he is required to pay and does pay to the Department in connection with the same automobile rental transaction. See 86 Ill. Adm. Code 190.115(b).

In addition to State Automobile Renting Occupation and Use Taxes, municipalities and counties are authorized to impose automobile renting occupation and

use taxes that are collected and administered by the Illinois Department of Revenue. See 65 ILCS 5/8-11-7; 65 ILCS 5/8-11-8; 55 ILCS 5/5-1032; and 55 ILCS 5/5-1033. Certain special districts are also authorized to impose automobile renting occupation and use taxes that are collected and administered by the Department. See 70 ILCS 210/13; 70 ILCS 3610/5.02; and 70 ILCS 3615/4.03.1. We note that, currently, the Metropolitan Pier and Exposition Authority is the only special district imposing such a tax. These municipal, county, and special district automobile renting occupation and use taxes are generally subject to the same conditions, restrictions, limitations, penalties and definitions of terms, and employ the same modes of procedure, as are prescribed in the Automobile Renting Occupation and Use Tax Act. In addition, municipal, county, and special district automobile renting occupation tax statutes authorize persons subject to the tax (i.e., “rentors”) to reimburse themselves for their tax liability by collecting it from the rentee.

Incorporation of marketplace facilitator provisions from Retailers’ Occupation Tax Act

Section 3 of the Automobile Renting Occupation and Use Tax Act imposes the Automobile Renting Occupation Tax and provides that “[i]n the administration of, and compliance with, this Section, the Department [of Revenue] and persons who are subject to this Section shall have the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations, penalties and definitions of terms, and employ the same modes of procedure, as are prescribed in Sections 1, 1a, 2 through 2-65 (in respect to all provisions therein other than the State rate of tax), 2a, 2b, 2c, 3 (except provisions relating to transaction returns, electronic filing of returns, and quarter monthly payments), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 11a, 12 and 13 of the Retailers’ Occupation Tax Act and Section 3-7 of the Uniform Penalty and Interest Act as fully as if those provisions were set forth herein.” (35 ILCS 155/4) Among other things, these provisions incorporate the Sections of the Retailers’ Occupation Tax Act related to marketplace facilitators as fully as if those Sections were set forth in the Automobile Renting Occupation and Use Tax Act.

As used in the Retailers’ Occupation Tax Act, a marketplace is a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105. A marketplace facilitator is a person who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates, facilitates a retail sale by an unrelated third-party marketplace seller by: (i) listing or advertising for sale, by the marketplace seller in a marketplace, tangible personal property that is subject to tax under the Retailers’ Occupation Tax Act; and (ii) either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller regardless of whether the marketplace facilitator receives compensation or other

consideration in exchange for its services. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105. A marketplace seller is a person who makes sales through a marketplace operated by an unrelated third-party marketplace facilitator. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105.

Beginning January 1, 2021, a marketplace facilitator is considered a retailer engaged in the occupation of selling at retail in Illinois for purposes of the Retailers' Occupation Tax Act if either of following thresholds is met: (1) the cumulative gross receipts from sales of tangible personal property to purchasers in Illinois made through the marketplace by the marketplace facilitator and by marketplace sellers are \$100,000 or more; or (2) the marketplace facilitator and marketplace sellers selling through the marketplace cumulatively enter into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois. See 35 ILCS 120/2(c); 86 Ill. Adm. Code 131.135(a). Marketplace facilitators meeting either of these thresholds are required to register with the Department, file returns, and remit all applicable State and local retailers' occupation taxes administered by the Department for all sales made over the marketplace to Illinois purchasers, including their own sales and sales made on behalf of marketplace sellers. See 35 ILCS 120/2(c); 86 Ill. Adm. Code 131.145(a) and 131.145(c). Further, marketplace facilitators are subject to audit on all such sales. Section 131.145(c). Beginning January 1, 2021, a marketplace facilitator facilitating sales of tangible personal property that meet or exceed one of the thresholds established in item (1) or (2) above is deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser when the sale is made by a marketplace seller on the marketplace facilitator's marketplace. See 35 ILCS 120/2-12(7)); 86 Ill. Adm. Code 131.155(b).

As incorporated into the Automobile Renting Occupation and Use Tax Act, "persons engaged in the business of selling tangible personal property at retail" means "persons engaged in the business of renting automobiles for periods of one year or less for valuable consideration;" "sales" or "sales at retail" means "automobile rentals under lease terms of one year or less;" "gross receipts" means "gross receipts" or "rent;" "sellers" and "retailers" means "automobile rentors;" "marketplace sellers" means "marketplace rentors;" and "users" or "purchasers" means "rentees."

Based on the information provided, it is the Department's opinion that when a car rental facilitation company operates a peer-to-peer motor vehicle sharing platform it is acting as a marketplace facilitator under marketplace facilitator provisions of the Automobile Renting Occupation and Use Tax Act, as incorporated from the Retailers' Occupation Tax Act. If the car rental facilitation company meets either of the tax remittance thresholds discussed above (i.e., (1) the cumulative gross receipts from the rental of automobiles to rentees in Illinois for a period of one year or less made through the peer-to-peer motor vehicle sharing platform by the car rental facilitation company and by the hosts are \$100,000 or more per year; or (2) the car rental facilitation

company and hosts cumulatively enter into 200 or more separate transactions per year for the rental of automobiles to renters in Illinois for a period of one year or less through the peer-to-peer motor vehicle sharing platform, then the car rental facilitation company is required to register with the Department, file returns, and remit all applicable State and local automobile renting occupation and use taxes administered by the Department for all rentals of automobiles to renters in Illinois for a period of one year or less made over the peer-to-peer motor vehicle sharing platform, including their own rentals and rentals made on behalf of hosts. 35 ILCS 155/3, incorporating 35 ILCS 120/2 as fully as if set forth therein.

A corresponding Automobile Renting Use Tax is imposed on the renter (guest) in this transaction and the renter (car rental facilitation company) is required to collect the Automobile Renting Use Tax from the renter. 35 ILCS 155/4; 86 Ill. Adm. Code 190.101 and 190.110. The renter must remit the Automobile Renting Use Tax he collects to the Department, but first may reduce what he must remit by the Automobile Renting Occupation Tax (if any) which he is required to pay and does pay to the Department in connection with the same automobile rental transaction. See 86 Ill. Adm. Code 190.115.

The car rental facilitation company is also subject to any municipal, county, and special district Automobile Renting Occupation Tax imposed at the location where the car rental facilitation company is engaged in the business of renting automobiles and the car rental facilitation company is authorized to collect a reimbursement of that tax from the renter. 55 ILCS 5/5-1032; 65 ILCS 5/8-11-7; and 70 ILCS 210/13, incorporating 35 ILCS 155/3, which incorporates 35 ILCS 120/2-12(7) as fully as if set forth therein.

Determination of obligation of car rental facilitation company to remit tax

A car rental facilitation company that is a marketplace facilitator shall determine on a quarterly basis, ending on the last day of March, June, September, and December, whether it meets either of the tax remittance thresholds for the preceding 12-month period. If the marketplace facilitator meets either threshold for a 12-month period, it is considered a renter engaged in the business of renting automobiles in Illinois and is required to remit the Automobile Renting Occupation Tax and all automobile renting occupation taxes imposed by local taxing jurisdictions in Illinois, provided those local taxes are administered by the Department, and to file all applicable returns for one year. A marketplace facilitator shall begin collecting taxes for rental transactions beginning on the first day of the quarter immediately following the end of the 12-month lookback period. Taxes so collected shall be remitted to the Department no later than the 20th day of the calendar month following the month in which they were collected or as otherwise provided in accordance with Section 3 of the Automobile Renting Occupation and Use Tax Act.

At the end of that one-year period, the marketplace facilitator shall determine whether it met either of the tax remittance thresholds for the preceding 12-month period. If the marketplace facilitator met either threshold for the preceding 12-month period, it is considered a rentor engaged in the business of renting automobiles in Illinois and is required to remit all applicable State and local automobile renting occupation taxes and file returns for the subsequent year. 35 ILCS 155/3, incorporating 35 ILCS 120/2(c) as fully as if set forth therein. If, at the end of the one-year collection period, the marketplace facilitator determines that its rentals to rentees in Illinois did not meet either of the thresholds above during that year, it must discontinue remitting State and local automobile renting occupation taxes. If a marketplace facilitator is no longer required to remit State and local automobile renting occupation taxes, it must notify the Department and its marketplace rentors of this change. It must also provide the Department with the name, address and FEIN of all marketplace rentors making rentals of automobiles to rentees in Illinois for a period of one year or less during the previous one-year period. Notification to the Department and provision of the information required by this paragraph shall be made electronically as required by the Department. Until notification is made, marketplace facilitators remain liable for tax under the Automobile Renting Occupation and Use Tax Act.

If a marketplace facilitator is no longer required to remit State and local automobile renting occupation taxes and has discontinued tax remittance, it must redetermine, on a rolling quarterly basis, whether it is obligated to once more begin remitting State and local automobile renting occupation taxes. For each quarter ending on the last day of March, June, September, and December, the marketplace facilitator must examine its rentals of automobiles to rentees in Illinois for a period of one year or less for the immediately preceding 12-month period to determine whether it met either of the thresholds above. If it met either of those thresholds during that 12-month lookback period, it must remit State and local automobile renting occupation taxes for the following 12-month period. At the end of that 12-month period, it must examine its rentals of automobiles to rentees in Illinois for a period of one year or less for the immediately preceding 12-month period to determine if it must continue to remit tax. 35 ILCS 155/3, incorporating 35 ILCS 120/2 as fully as if set forth therein.

Timing of application of marketplace facilitator provisions to titled and registered property

With respect to the treatment of titled and registered property, which impacts the treatment of automobiles under the Automobile Renting Occupation and Use Tax Act, the administrative rules implementing the marketplace facilitator provisions of the Retailers' Occupation Tax Act initially provided that:

- c) Sales of tangible personal property that is required to be titled or registered with an agency of the State of Illinois, including motor vehicles, watercraft, aircraft, and trailers, that are made over a marketplace to

Illinois purchasers are not subject to the provisions of this Part. State and local uses taxes shall continue to be paid by purchasers as required by law as a condition of titling or registering these items. (86 Ill. Adm. Code 131.130(c))

As a result of this original interpretation, the marketplace facilitator provisions did not impact the Automobile Renting Occupation and Use Tax. However, there is no statutory exception for titled and registered property and these rules have been amended to align with the statute and provide:

- c) Beginning February 1, 2022, sales of tangible personal property that is required to be titled or registered with an agency of the State of Illinois, including motor vehicles, watercraft, aircraft, and trailers, that are made over a marketplace to purchasers in Illinois are subject to the provisions of this Part. (86 Ill. Adm. Code 131.130(c) as amended, effective January 26, 2022)

Therefore, effective February 1, 2022, under the Retailers' Occupation Tax Act, marketplace facilitators who facilitate the sale of titled and registered property and meet a tax remittance threshold are required to remit State and local retailers' occupation taxes administered by the Department on all taxable sales of titled and registered property made by the marketplace facilitator or facilitated for marketplace sellers to customers in this State (35 ILCS 120/2(c); 86 Ill. Adm. Code 131.130(c)). And, consequently, through incorporation of the Retailers' Occupation Tax Act by reference, effective February 1, 2022, under the Automobile Renting Occupation and Use Tax Act, marketplace facilitators (i.e., car rental facilitation companies) who facilitate the rental of automobiles to rentees in Illinois for a period of one year or less through peer-to-peer motor vehicle sharing platforms and who meet a tax remittance threshold are required to remit State and local automobile renting occupation taxes administered by the Department on all taxable rentals of automobiles to rentees in Illinois for a period of one year or less made by the marketplace facilitator (i.e., car rental facilitation company) or facilitated for marketplace rentors (i.e., hosts). 35 ILCS 155/3, incorporating 35 ILCS 120/2(c) as fully as if set forth therein.

A car rental facilitation company (i.e., marketplace facilitator) that has met a tax remittance threshold is liable for the remittance of all applicable State automobile renting occupation taxes and local automobile renting occupation taxes administered by the Department for the rental of automobiles to rentees in Illinois for a period of one year or less through the marketplace and is subject to audit on all such rentals. The Department shall not audit hosts (i.e. marketplace rentors) for their rental of automobiles to rentees in Illinois for a period of one year or less over the marketplace where the car rental facilitation company had an obligation to remit the applicable State and local automobile renting occupation taxes, unless the car rental facilitation company seeks relief as a result of incorrect information provided to the car rental facilitation company

by a host. The car rental facilitation company shall not be held liable for tax on any rentals of automobiles to rentees in Illinois for a period of one year or less made by a host that take place outside of the marketplace and which are not a part of any agreement between the car rental facilitation company and the host. 35 ILCS 155/3, incorporating 35 ILCS 120/2(c) as fully as if set forth therein. A car rental facilitation company required to collect taxes imposed under the Automobile Renting Use Tax (35 ILCS 155/4) on marketplace rentals of automobiles to rentees in Illinois for a period of one year or less shall be liable to the Department for such taxes, except when the car rental facilitation company is relieved of the duty to remit such taxes by virtue of having paid to the Department taxes imposed by the Automobile Renting Occupation Tax (35 ILCS 155/3) upon his or her gross receipts from such rental of automobiles to rentees in Illinois for a period of one year or less. 35 ILCS 155/3, incorporating 35 ILCS 120/2(g) as fully as if set forth therein. The Department of Revenue shall not collect automobile renting occupation taxes from both the car rental facilitation company and host on the same transaction. 35 ILCS 155/3, incorporating 35 ILCS 120/2(h) as fully as if set forth therein. If, for any reason, the Department is prohibited from enforcing the car rental facilitation company's duty to remit taxes pursuant to the Automobile Renting Occupation Tax, the duty to remit such taxes remains with the host. 35 ILCS 155/3, incorporating 35 ILCS 120/2(i) as fully as if set forth therein.

Retailers' Occupation Tax

The Retailers' Occupation Tax Act provides an exemption from tax for the sale of "[a] motor vehicle that is used for automobile renting, as defined in the Automobile Renting Occupation and Use Tax Act." See 35 ILCS 120/2-5(5).

It is the Department's opinion that the exemption from the Retailers' Occupation Tax Act for the sale of "[a] motor vehicle that is used for automobile renting, as defined in the Automobile Renting Occupation and Use Tax Act[]" (35 ILCS 120/2-5(5)) is available for a motor vehicle that will be used exclusively for automobile renting, as defined in the Automobile Renting Occupation and Use Tax Act.

It is the Department's opinion that the exemption from the Retailers' Occupation Tax Act for the sale of "[a] motor vehicle that is used for automobile renting, as defined in the Automobile Renting Occupation and Use Tax Act[]" (35 ILCS 120/2-5(5)) is not available for a motor vehicle that will be used substantially for personal or other non-exempt purposes.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm.

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Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Chairman, Private Letter Ruling Committee

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