

Effective January 1, 2020, qualified tangible personal property used in the construction or operation of a data center that has been granted a certificate of exemption by the Department of Commerce and Economic Opportunity, whether that tangible personal property is purchased by the owner, operator, or tenant of the data center or by a contractor or subcontractor of the owner, operator, or tenant is exempt from sales and use taxes. 35 ILCS 130/2-5(44); 86 Ill. Adm. Code 130.1957 (This is a GIL.)

April 12, 2022

Dear NAME:

This letter is in response to your e-mail dated February 17, 2022, 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:

Facts:

- 1) Tangible personal property is purchased through a capital financing lease that meets the definition of "Qualified Tangible Personal Property" under Regulation, Illinois, 86 Ill. Adm. Code 130.1957 (attached).

Questions:

- 1) Does a capital financing lease that is deemed a "conditional sale" (and not a "true lease") qualify for the data center exemption under Regulation, Illinois, 86 Ill. Adm. Code 130.1957?
 - a. In this scenario the IL Department of Commerce and Economic

Opportunity ("DCEO") has qualified the data center with an effective date of January 1, 2020.

- b. The capital financing lease agreement was entered into on February 1, 2020 with payments of \$\$\$\$\$ due each month for the next thirty-six (36) months.
- c. Is tax due in the capital financing lease stream of the "conditional sale" for the period February 1, 2020 through January 1, 2023?

2) Does a capital financing lease that is deemed a "conditional sale" (and not a "true lease") qualify for the data center exemption under Regulation, Illinois, 86 Ill. Adm. Code 130.1957?

- a. In this scenario the IL Department of Commerce and Economic Opportunity ("DCEO") has qualified the data center with an effective date of June 1, 2021.
- b. The capital financing lease agreement was entered into on January 1, 2020 with payments of \$\$\$\$\$ due each month for the next thirty-six (36) months.
- c. Is tax due in the capital financing lease stream of the "conditional sale"?
 - i) For the period January 1, 2020 through May 1, 2021 prior to DCEO qualifying the data center?
 - ii) For the period June 1, 2021 through December 1, 2022 after DCEO qualified the data center?

Thank you for your assistance. If you have any questions or need additional information, please contact me [].

DEPARTMENT'S RESPONSE:

LEASES

For Illinois Retailers' Occupation Tax and Use 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. See 86 Ill. Adm. Code 130.2010.

A true lease generally has no buyout 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. 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. The State of Illinois imposes no tax on lease receipts. Consequently, lessees incur no tax liability. See 86 Ill. Adm. Code 130.2010.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq and merchandise rented for personal, family, or household purposes that is subject to tax under the Rental Purchase Agreement Occupation and Use Tax Act found at 35 ICLS 180/1 et seq.. While we cannot rule specifically in the context of a General Information Letter, a lease contract meeting the following conditions would generally be considered to be a true lease rather than a conditional sale: (1) a customer who has otherwise met the requirements of the agreement can cease making payments and return the property at the end of any lease term without further payment obligation, (2) the customer is never under any obligation to purchase the property, and (3) the agreement does not guarantee a sale of the tangible personal property at the inception of the contract. Because, under this type of lease agreement, the lessee is free to walk away from the lease at the end of each lease term and therefore a sale of the property is not guaranteed at the time the lease is entered into, it is the Department's opinion that such an agreement would be a true lease. A lessor engaging in this type of lease should pay Use Tax to his supplier for all items that he purchases to lease. Receipts from the rental of tangible personal property under a true lease are not subject to Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2013(g). Without reviewing the actual lease agreement, the Department cannot determine the tax obligation of the lessor or the lessee.

DATA CENTERS

Effective January 1, 2020, qualified tangible personal property used in the construction or operation of a data center that has been granted a certificate of exemption by the Department of Commerce and Economic Opportunity, whether that tangible personal property is purchased by the owner, operator, or tenant of the data center or by a contractor or subcontractor of the owner, operator, or tenant is exempt from sales and use taxes. 86 Ill. Adm. Code 130.1957. Data centers that would have qualified for a certificate of exemption prior to January 1, 2020, had Public Act 101-0031 been in effect, may apply for and obtain an exemption for subsequent purchases of

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computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the original investment that would have qualified. 86 Ill. Adm. Code 1957(d). "Data center" means a building or a series of buildings rehabilitated or constructed to house working servers in one physical location or multiple sites within the State of Illinois. 35 ILCS 130/2-5(44). See FY 2020-04-A (Sept. 2019); 86 Ill. Adm. Code 130.1957 Tangible Personal Property Used in the Construction or Operation of Data Centers. To receive the exemption, the data center must obtain a certificate of exemption from the Department of Commerce and Economic Opportunity. See 20 ILCS 605/605-1025. Each owner, operator, or tenant of a data center, or a contractor or subcontractor of the owner, operator or tenant, must provide an active certificate of exemption before it can make tax exempt purchases of qualified tangible personal property. 86 Ill. Adm. Code 130.1957(c).

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,

Richard S. Wolters
Associate Counsel

RSW:rkn