

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 and Use Tax set for at 35 ILCS 155/1 *et seq.* See 86 Ill. Adm. Code 180.101. (This is a GIL.)

July 13, 2022

NAME/ADDRESS

Dear Mr. XXX:

We apologize for the delay in responding to your letter of inquiry. 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:

After reaching out by e-mail to the Illinois Department of Revenue, we were instructed by the Revenue Tax Specialist to direct our inquiry below to your office.

Our client, COMPANY, plans on operating in CITY (COUNTY) in the near future. They have registered with the IL Department of Revenue and have been issued Automobile Rental Tax (#####-####) and Sales/Use Tax & E911 Surcharge (#####-####) account IDs/licenses. After reviewing the regulations and other information, we are looking for additional guidance on the applicability of the Automobile Renting Occupation Tax and/or Sales Tax on some of their services/charges.

For some general background information, COMPANY is a car-sharing organization. Members have to [sic] opportunity to rent available vehicles using an app on their mobile device for a period that could range from minutes – hours – day. I have included a link to their webpage if you need more information below.

ADDRESS

We understand that their base rental charge is subject ONLY to the Automobile Renting Tax (not Sales Tax). We have included the types of charges that are incurred by members that we would like guidance on the applicability of either the Automobile Renting Tax or Sales Tax. Our questions/requests are indicated in **BOLD**.

1. Validation fee – this is a fee incurred when a user initially joins COMPANY as a member.
 - a. No drive time included. **Our presumption is this fee is NOT subject to the Automobile Rental Tax under Title 86 Part 180 Section 180.125(5) and it is NOT subject to Sales Tax under Title 86 Part 130 Section 130.401(d).**
 - b. Drive time included. There are times that a pre-determined amount of free rental time (drive time) is included with a validation fee. **Our presumption is that the Automobile Rental Tax would apply to this fee using the logic of the Title 86 Part 130 Section 130.301(d). However, since the service being provided IS subject to the Automobile Rental Tax, only that tax would apply and Sales Tax would NOT be collected.**
2. Driver Protection Fee – Charged per trip and is \$x per trip, but only for y number of times during the course of a calendar year. Resets annually. This is essentially a fee related to the deductible in case of an accident.

Our presumption is this fee is NOT subject to the Automobile Rental Tax under Title 86 Part 180 Section 180.125(2). Please confirm.

3. Separately stated charges directly related to a rental. There about ###+ charges related to a rental that are an added fee to the base drive time rental charge depending on the nature of the circumstances leading to the fee (e.g. – lost key, excess cleaning, unauthorized parking, etc.)

It is our presumption based on our interpretation of the regulations that these types of charges are subject to the Automobile Rental Tax. They are all related to the use of tangible personal property and are not specifically excluded in Title 86 Part 180 Section 180.125. Please

advise is [sic] any of the above charges are exempt from the Automobile Rental Tax and/or would be subject to Sales Tax in lieu of the Automobile Rental Tax.

4. Other Charges:
 - a. Declined Credit Card Payment – Penalty fee incurred by member when credit card transaction is declined. This is separate from original transaction that still needs to be completed.
 - b. Cancellation – Administrative fee to cancel a vehicle reservation.
 - c. No Show – Penalty fee that is incurred when member does not use a reservation they have initiated.

It is our presumption that these charges are NOT subject to the Automobile Rental Tax as they are not for the use of tangible personal property as provided in Title 86 Part 180 Section 180.125(5).

Do these item [sic] fall under the meaning of Gross Receipts of Title 86 Part 130 Section 130.401 and therefore subject to Sales Tax?

5. Direct Pass-through charges:
 - a. Towing Costs;
 - b. Parking tickets;
 - c. Tolls.

It is our presumption that the reimbursement of actual costs incurred would not be subject to the [sic] either the Automobile Rental Tax or Sales Tax.

Thanks in advance for your reply. We look forward to a response in order to comply appropriately. Please let me know if you need any additional information.

DEPARTMENT'S RESPONSE:

Please note that the Department cannot give a definitive ruling to your specific questions in the context of a General Information Letter.

The Illinois Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., and the Use Tax Act, 35 ILCS 105/1 et seq., apply to the retail sale of tangible personal property. Generally, the Department does not consider receipts from the sale of membership fees to be gross receipts from the sale of tangible personal property. Rather, a membership

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fee is considered an intangible, which is not subject to the Retailers' Occupation Tax Act or the Use Tax Act. 86 Ill. Adm. Code 130.401(d). This is the case when the sale of membership rights does not include the transfer of tangible personal property. However, if the membership charge entitles the customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to that service, then that charge may result in either Retailers' Occupation Tax liability, Service Occupation Tax liability or Use Tax liability, depending upon the serviceman's activities. See 86 Ill. Adm. Code 140.101.

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 and Use Tax (ART). 35 ILCS 155/1 et seq. See also 86 Ill. Adm. Code 180.101. 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 all consideration received by a rentor as the rental price for the rental of automobiles under lease terms of one year or less. See 86 Ill. Adm. Code 180.120 and 180.125. 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." 35 ILCS 155/2. Certain charges, though, are not subject to tax and are listed in Section 180.125 of the Department's regulations. Gross receipts on which ART must be computed do not include certain separately stated charges added to renters' billings, such as receipts from renters in consideration of waivers of claims for loss or damage to automobiles rented or receipts from any other separately stated charges which are not for the use of the tangible personal property. See 86 Ill. Adm. Code 180.125(a).

It appears many of the items in your letter involve charges for the use of the vehicle or tangible personal property used by a rentee in connection with the rental of a vehicle and are taxable under ART. However, without reviewing the contracts, we cannot provide you guidance concerning the specific costs associated with the other fees and charges you may assess for the vehicle rental.

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,

Thomas Grudichak
Associate Counsel