

Information regarding sales tax liabilities involved in a lease transaction may be found at 86 Ill. Adm. Code 130.220 and 86 Ill. Adm. Code 130.2010. (This is a GIL.)

February 1, 2023

NAME/COMPANY/ADDRESS

Dear Mr. XXX:

This letter is in response to your letter dated December 05, 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:

We are requesting an Advisory Opinion regarding Illinois sales tax. How should sales tax be applied assuming a true operating lease of a utility trailer that is being licensed and registered in Illinois? Should sales tax be charged on the amount COMPANY pays the trailer dealer for the trailer at the time COMPANY purchases the trailer? Or should sales tax be paid at the time of registration on the total payments that COMPANY expects to receive over the life of the lease from the lessee? Or should some other method be used?

Based on our review of publication ST-9-LSE A Guide for Reporting Sales Using Form ST-556-LSE we conclude that sales tax in this example should be based on the actual cost paid to the dealer rather than the total of expected payments received from the lessee because a trailer does not meet the definition of First Division Motor Vehicles described on page 16 of that publication.

Circumstances

COMPANY is domiciled in STATE and we are an equipment leasing company. We have true operating leases in most states including Illinois and we register trailers in Illinois regularly. This is how our transactions usually happen:

Individuals that live in Illinois arrive at various trailer dealers in Illinois. Rather than the customer purchasing the trailer outright, COMPANY has an arrangement with dealers that allows their customers to lease trailers from COMPANY. COMPANY purchases the trailer from the dealer and then leases it to their customer as one transaction. The term of the lease is typically 3 years. At the conclusion of the lease the customer may purchase the trailer from COMPANY for what we consider a fair market value, say \$ 1,000 in this example.

The cost of the utility trailer is typically around \$ 5,000 to \$ 15,000. In order to license and register the trailer in Illinois, COMPANY pays sales tax and other registration fees. Assuming a true operating lease, should the sales tax that COMPANY pays to Illinois be based on the actual price of the trailer [sic] paid to the dealer, say \$ 7,500 in this example... or should the tax be based on the total of lease expected payments received from the lease, say \$9,000 plus \$1,000 (\$ 250 x 36 months plus \$ 1,000)

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then no Illinois Retailers' Occupation Tax or Use Tax would apply.

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states do. For Illinois sales tax purposes, there are two types of leases: 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 otherwise, if the lessor is 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 buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of a true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.2010(b). As end users of tangible personal property personal property

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located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased for 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.

As mentioned, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See 86 Ill. Adm. Code 150.310(a)(3).

Under Illinois law, lessors may not “pass through” their tax obligation to the lessees as taxes. However, it is typical of true leases to contain contractual provisions stating that the lessees will reimburse the lessors for their tax costs. This is not a matter of Illinois tax law but private agreement between lessors and lessees. If the lessees agreed to such provisions, they are bound to satisfy that duty because of a contractual agreement, not because of Illinois tax law.

As stated above, the State of Illinois imposes no Retailers’ Occupation Tax or Use Tax on rental receipts. Moreover, since a lessee under a true lease incurs no tax liability on the lease of tangible personal property, the lessee generally incurs no such tax liability on any related lease charges such as late payment fees, disposition fees, lease termination fees, service fees, or legal fees.

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,

Kimberly Rossini
Associate Counsel

KAR:dlb