

This letter discusses the renting of automobiles by dealers in Illinois under rental terms of one year or less that are subject to the Automobile Renting Occupation and Use Tax. 35 ILCS 155/1 et seq; 86 Ill. Adm. Code 180.101. (This is a GIL).

July 5, 2023

NAME
LAW FIRM
ADDRESS

Dear NAME:

This letter is in response to your letter dated May 19, 2023, 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 request a general information letter on the application of the Illinois Retailers' Occupation Tax and Use Tax and Automobile Renting Occupation Tax on certain motor vehicle transactions sales. Specifically, a motor vehicle dealer ("Dealer") will sell motor vehicles to an affiliate of a vehicle dealer ("Affiliate"), and the Affiliate will rent the motor vehicles to customers. It is expected that most customers who rent a motor vehicle from the Affiliate would, at the same time, have their own car in for service with the Dealer.

The general facts are that the Dealer is registered as an Illinois vehicle dealer (625 ILCS 5/5-101 et seq.) and Illinois tax collector for Illinois Retailers [sic] Occupation Tax and Use Tax ("ROT and Use Tax"). 35 ILCS 120/1 et seq.; 35 ILCS 105/10 et seq. The Dealer plans to create a wholly-owned limited liability company ("COMPANY") to which it will sell vehicles. COMPANY will engage in the business of the short-term rentals

July 5, 2023

of the vehicles (1-year or less) and register under the Automobile Renting Occupation Tax ("AROT"). 35 ILCS 155/1 *et seq.* These short-term rentals will principally be to customers of the Dealer that need loaner cars while the Dealer provides service repairs for the customer vehicle. COMPANY will be compensated either by the customer for the rental vehicle or, alternatively, by the Dealer. The amount of the rental price could range for \$\$ a day, to a significantly greater sum or possibly only a minimal amount per day, depending on the type of the loaner and the rental period.

Under the ROT and Use Tax, sales of vehicles to an affiliate when the affiliate will exclusively use such vehicles for rentals that are subject to the AROT, will not be subject to ROT and Use Tax. 35 ILCS 120/2-5 (5). Therefore, the Dealer's sales of vehicles to COMPANY should not be subject to ROT and Use Tax.

Under the AROT, the short term rental of motor vehicles to customers of the Dealer by COMPANY would be subject to the AROT, absent an exemption. 35 ILCS 155/2. Even if the COMPANY does not make a profit on the rentals, that is not relevant to whether COMPANY'S rentals are subject to the AROT. 35 ILCS 155/2. ("For this purpose, the objective of making a profit is not necessary to make the renting activity a business.") Nor is the amount charged or received for the rental relevant to whether the AROT applies to the transaction, since AROT is based on the rental price paid. *Id.*

Consequently, it is requested that the Department of Revenue confirm in a general information letter that the above stated understanding of the application of the AROT to COMPANY is correct, including that the tax is properly measured based on the gross receipts actually received by COMPANY, whether received from the Dealer and/or customer, absent an exemption.

Thank you for your time and consideration of this matter.

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 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at

the time of purchase. The retailers are then allowed to reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

A person who is engaged in the business of selling motor vehicles to a purchaser for his use and not for the purpose of resale, is a retailer engaged in the business of selling tangible personal property at retail under the Retailers' Occupation Tax Act. Unless an exemption can be found, Dealer is liable for Retailers' Occupation Tax, and COMPANY is liable for Use Tax, on the sale of the motor vehicles from Dealer to COMPANY.

The Retailers' Occupation Tax Act and Use Tax Act contain exemptions from tax for gross receipts received from proceeds from the sale of a motor vehicle that is used for automobile renting, as defined in Automobile Renting Occupation and Use Tax Act. 35 ILCS 120/2-5(5); 35 ILCS 105/3-5(10).

The Automobile Renting Occupation and Use Tax Act ("ART") imposes an occupation tax ("AROT") upon persons engaged in this State in the business of renting automobiles in Illinois under lease terms of one year or less at the rate of 5% of the gross receipts from such business. 35 ILCS 155/3. See 86 Ill. Adm. Code 180.101. ART also imposes a use tax ("ARUT") upon the privilege of using, in this State, an automobile which is rented from a rentor at the rate of 5% of the rental price of such automobile paid to the rentor under any rental agreement. 35 ILCS 155/4.

"Rentor" means any person, firm, corporation or association engaged in the business of renting or leasing automobiles to users. "Rentee" means 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, whether paid for by the "rentee" or by someone else. 35 ILCS 155/2.

"Gross receipts" means the total rental price or leasing price. "Rental price" means the consideration for renting or leasing an automobile valued in money, whether received in money or otherwise, including cash credits, property and services, and shall be determined without any deduction on account of the cost of the property rented, the cost of materials used, labor or service cost, or any other expense whatsoever, but does not include charges that are added by a rentor on account of the rentor's tax liability under this Act or on account of the rentor's duty to collect, from the rentee, the tax that is imposed by the ARUT. 35 ILCS 155/2.

If the rentor is required or authorized to collect the ARUT, then the rentee must pay the tax to the rentor. The rentor must remit the ARUT it collects to the Department, but first reduces what it must remit in this connection by the AROT (if any) which it is required to pay and does pay to the Department in connection with the same automobile rental transaction. 86 Ill. Adm. Code 190.115.

July 5, 2023

As explained above, ART is composed of two taxes: an occupation tax is imposed on the person engaged in the business of renting automobiles (the rentor), and a use tax is imposed on the person renting the automobile (the rentee). The use tax is imposed at the rate of 5% of the rental price of such automobile paid to the rentor under the rental agreement. Your letter does not state the terms of the rental agreement, or more specifically, the rental price the rentee pays the rentor for renting the automobile. Nor does your letter state whether any additional amount the dealer pays to the rentor for renting the automobile is included in the rental price stated in the rental agreement between the rentor and rentee or is addition to the amount stated in the rental agreement.

For example, if the rental agreement between the rentor and rentee specifies a rental price of \$50 per day, and the rentee pays \$30 to the rentor and the dealer pays \$20 to the rentor on the rentee's behalf, the rentee is liable for \$2.50 in ARUT (5% of \$50). The rentor is liable for \$2.50 in AROT. The rentor can reduce the amount of ARUT it is required to remit to the Department by the amount of AROT it pays to the Department. In other words, if the rentor pays \$2.50 in AROT, it has no obligation to remit the \$2.50 in ARUT it collected from the rentee.

Another example: if the rental agreement between the rentor and rentee specifies a rental price of \$30 per day, and the rentee pays \$30 to the rentor and the dealer pays \$20 to the rentor based on an agreement between the dealer and the rentor, the rentee is liable for \$1.50 in ARUT (5% of \$30). However, the rentor received a total rental price of \$50 for leasing the automobile and is liable for \$2.50 in AROT. The rentor can reduce the amount of ARUT it required to remit to the Department by \$1.50 but is liable for \$2.50 in AROT.

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:dlb