Gross receipts from proceeds from the lease of tangible personal property that is subject to a tax on lease receipts imposed by a home rule unit of local government are exempt from State and Department-administered local retailers' occupation taxes if the ordinance imposing that tax was adopted prior to January 1, 2023. See 35 ILCS 120/2-5(49)(2) as added by Article 75 of Public Act 103-592. (This is a PLR).

May 28, 2025

NAME
COMPANY1
ADDRESS

Dear NAME:

This letter is in response to your letter dated March 10, 2025, 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 https://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 COMPANY2, 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 COMPANY2, 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:

> COMPANY1 submits this Request for a Private Letter Ruling pursuant to 2 Illinois Administrative Code 1200.110 from the Illinois Department of Revenue on behalf of its client COMPANY2 and subsidiaries (collectively, the "Company"). We respectfully request a Private Letter Ruling affirming that:

> The Company's receipts from the lease of equipment to customers located in the City of Chicago are exempt from taxation under Illinois' Retailers' Occupation Tax in accordance with 35 ILCS 120/2-5(49)(2) because the lease receipts are subject to the City of Chicago's Amusement Tax.

To the best of both the Company and our knowledge, the Department has not previously ruled on the same or a similar issue for the Company or a predecessor, and neither the Company nor any representative previously submitted the same or a similar issue to the Department. The Company does not have an audit or litigation pending with the Department related to this issue.

I. Facts

A. *Customer Agreements*

The Company leases equipment to its Chicago customers, including set-top boxes, remote controls, and other tangible personal property used to provide cable television service. Per its customer agreements, the Company – (i) retains title to the equipment during the lease period; (ii) limits the customers' usage of the equipment in multiple ways (e.g., prohibitions on selling the equipment, using the equipment with other service providers, or using the equipment at locations other than their premises); and (iii) requires customers to pay a substantial fee if they do not return the equipment at the end of their service period. *See attached* Exhibit A, "SERVICE AGREEMENT" at § 7.

B. Company History

The City of Chicago imposes the Amusement Tax on the charges paid for the privilege to view the Company's cable television service. During a late-2000s audit, the Chicago Department of Finance concluded that the Company's receipts from leases of such equipment to Chicago customers were subject to the Amusement Tax. Although the Chicago Personal Property Lease Transaction Tax would alternatively apply to such lease transactions, the Department did not impose such tax on the Company's equipment leases to avoid double taxation. Since the close of that audit, the Company has collected and remitted the Amusement Tax on charges for equipment leased to its Chicago customers used to view cable television service.

II. Issue

Whether the Company's receipts from the lease of equipment that are subject to Chicago's Amusement Tax qualify for the home rule exemption for lease receipts under 35 ILCS 120/2-5(49)(2).

III. Ruling Requested

The Company respectfully requests a Private Letter Ruling affirming that:

> The Company's receipts from the lease of equipment to customers located in the City of Chicago are exempt from taxation under Illinois' Retailers' Occupation Tax in accordance with 35 ILCS 120/2-5(49)(2) because the lease receipts are subject to the City of Chicago's Amusement Tax.

IV. Law and Discussion

Effective January 1, 2025, the Illinois General Assembly expanded the Illinois Retailers' Occupation Tax ("ROT") to apply to leases of tangible personal property. 35 ILCS 120/1. A "lease" is defined by statute as:

> "[A] transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called."

Id. To mitigate the double taxation of tangible personal property leases, Illinois exempts from the ROT "<u>property that is subject to a tax on lease receipts</u> imposed by a home rule unit of local government if the ordinance imposing that tax was adopted prior to January 1, 2023." 35 ILCS 120/2-5(49)(2) (emphasis added). In recent guidance (FY2025-15, Illinois Sales and Use Tax Applies to Leased or Rented Tangible Personal Property), the Department confirmed that Chicago's Personal Property Lease Transaction Tax is one example of such a tax.

The Company's equipment leases that are subject to the Amusement Tax also meet the test for the above ROT exemption because: (i) Chicago is a home rule unit of local government; (ii) Chicago's Amusement Tax Ordinance was adopted prior to January 1, 2023; and (iii) the Amusement Tax is imposed on the receipts from the lease of equipment, as part of the "charges paid" for the underlying amusement.

At the outset, Chicago is a home rule unit of local government. *See* Ill. Const. of 1970, Art. VII, § 6(a) ("[A]ny municipality which has a population of more than 25,000 [is a] home rule unit[]."). Additionally, Chicago adopted the Amusement Tax Ordinance prior to January 1, 2023. *See Metro-Goldwyn-Mayer, Inc. v. ABC-Great States, Inc.*, 291 N.E.2d 200, 201 (1972) ("In 1947, the City of Chicago enacted an amusement tax of 3% on the operators of theatres based upon the gross receipts from admissions in excess of ninety cents per single admission"). Chicago expanded the Amusement Tax to "paid television" – including cable television service – effective January 1, 1996. *See Commc'ns & Cable of Chicago, Inc. v. City of Chicago*, 282 Ill.App.3d 1038, 1041 (1996).

More substantively, the Amusement Tax is imposed on "lease receipts" from the lease or rental of the Company's equipment used to provide cable television service. In particular, the Chicago Amusement Tax is imposed on "patrons of every amusement within the City" on "the charges paid for the privilege to view...such amusement." Chicago, Ill. Mun. Code § 4-156-020.A. The Company's cable television service qualifies as a taxable "amusement" which includes "paid television" programming. *See* Chicago, Ill. Mun. Code § 4-156-010 (defining "amusement" and "paid television").

The Amusement Tax base – "charges paid" – includes not just the consideration paid to view the cable television service, but also:

> "<u>[A]ny and all charges that the patron pays incidental to obtaining the privilege to...to view...an amusement</u>, including but not limited to any and all related markups, service fees, convenience fees, facilitation fees, cancellation fees and other such charges, regardless of terminology."

Moreover, the Chicago Department of Finance has interpreted the City's Amusement Tax to apply to the Company's equipment leases. Chicago issued an August 1999 Information Bulletin which states that "charges for the use of telecommunications converters and remote control devices (whether or not separately stated) in connection with the provision of paid television programming" are subject to the Amusement Tax. Chicago subsequently issued an informational bulletin in 2008 that reiterated that cable companies' digital equipment leases – but not sales – are subject to the Amusement Tax.

Further, if the Company's equipment leases were not subject to the Chicago Amusement Tax, they would instead be subject to the Personal Property

Lease Transaction Tax. *See* Chicago, Ill. Mun. Code § 3-32-030.A. The only reason why the equipment is not subject to the tax is to avoid double taxation from the Amusement Tax.

Here, the Company's lease receipts from equipment used to provide cable service qualifies for the ROT exemption under 35 ILCS 120/2-5(49)(2). Indeed, that provision does not limit the exemption to a tax nominally imposed on tangible personal property leases (*e.g.*, the Chicago Personal Property Lease Transaction Tax), but rather provides that the exemption applies to any property subject to a tax on lease receipts imposed by a home rule unit of local government if the ordinance imposing that tax was adopted prior to January 1, 2023. 35 ILCS 120-2-5(49)(2). Accordingly, the exemption language in 35 ILCS 120/2-5(49)(2) takes a substance-over-form approach. In so doing, the relevant inquiry is only whether "lease receipts" are subject to a home rule tax imposed before January 1, 2023.

In addition to meeting the statutory language, excluding equipment subject to the Amusement Tax also satisfies the policy basis for the ROT exclusion of avoiding burdensome double taxation. Further, were the equipment not subject to the Amusement Tax, Chicago would, alternatively, impose the Personal Property Lease Transaction Tax on such leases.

We have not identified authorities which are contrary to the Company's view.

Accordingly, because the Company's receipts from leases of customer equipment used to view cable television service are subject to Chicago's Amusement Tax, they should be exempt from the ROT pursuant to 35 ILCS 120/2-5(49)(2).

V. Conclusion

We respectfully request confirmation that the Company's lease receipts subject to Chicago's Amusement Tax are exempt from the ROT.

Thank you in advance for consideration of this request. Please feel free to contact me at 202.383.0864 if you have any questions or require additional information.

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 at retail to purchasers for use or

consumption. See 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 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Effective January 1, 2025, in accordance with the provisions of Article 75 of Public Act 103-592, persons engaged in the business of leasing tangible personal property at retail ("lessors") in Illinois are subject to State and local retailers' occupation tax on the gross receipts from leases of tangible personal property made in the course of business. See 35 ILCS 120/2. A "lease" is defined as a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called, but does not include a lease entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee. On and after January 1, 2025, for purposes of State and local retailers' occupation taxes, the term "sale" includes a lease. See 35 ILCS 120/1. This includes the extension of all exemptions from retailers' occupation tax and use tax to leases. See 35 ILCS 120/2-5. The tax applies to lease receipts received on or after January 1, 2025 for leases in effect, entered into, or renewed on or after that date. The lessor must remit for each tax return period the tax applicable to lease receipts received during that tax return period. See 35 ILCS 120/2.

Gross receipts from the lease of property that is subject to a tax on lease receipts imposed by a home rule unit of local government are exempt from the State and Department-administered local retailers' occupation taxes if the ordinance imposing the home rule tax was adopted prior to January 1, 2023. See 35 ILCS 120/2-5(49)(2) as added by Article 75 of Public Act 103-592, which provides that:

> Sec. 2-5. Exemptions. Gross receipts from proceeds from the sale, which, on and after January 1, 2025, includes the lease, of the following tangible personal property are exempt from the tax imposed by this Act:
>
> . . .
>
> . . .
>
> (49) Gross receipts from the lease of the following tangible personal property:
>
> . . .
>
> . . .
>
> (2) property that is subject to a tax on lease receipts imposed by a home rule unit of local government if the ordinance imposing that tax was adopted prior to January 1, 2023.

The Department has previously stated that gross receipts from the lease of property that is subject to Chicago's Personal Property Lease Transaction Tax (Chicago, Ill. Mun. Code §3-32-030) are exempt from the State and Department-administered local retailers'

occupation taxes. The Department agrees that the tax paid by COMPANY2 under Chicago's Amusement Tax for the equipment (including set-top boxes, remote controls, and other tangible personal property) leased to customers to provide cable television services is "a tax on lease receipts imposed by a home rule unit of local government" under an ordinance that was adopted prior to January 1, 2023.

Chicago's Amusement Tax was adopted prior to January 1, 2023. To the extent it applies to the lease of tangible personal property, it is a tax on lease receipts. See Chicago, Ill. Mun. Code §4-156-020. The City of Chicago Department of Revenue confirmed that the Amusement Tax applies to lease receipts in the August 1999 Information Bulletin titled "Providers of Paid Television Programming" it issued which states that ". . . the Chicago amusement tax (Municipal Code, Chapter 4-156 *et seq.*) rather than the Chicago personal property lease transaction tax (Municipal Code, Chapter 3-32 *et seq.*), should be imposed upon charges for the use of telecommunications converters and remote control devices (whether or not separately stated) in connection with the provision of paid television programming." COMPANY2 states that it pays the Chicago Amusement Tax on the equipment it leases to its customers as part of the provision of cable television services. Therefore, the gross receipts COMPANY2 receives from the lease of property that is subject Chicago's Amusement Tax as part of its provision of cable television services are exempt from the State and Department-administered local retailers' occupation taxes.

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. 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) 782-7055. If you have further questions related to the Illinois sales tax laws, please visit our website at https://tax.illinois.gov/or contact the Department's Taxpayer Information Division at (800) 732-8866.

Very truly yours,

Samuel J. Moore
Chairman, Private Letter Ruling Committee

SJM:sce