ST 25-0012-GIL 03/14/2025 LEASING

Effective January 1, 2025, 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 as amended by Article 75 of Public Act 103-592. (This is a GIL).

March 14, 2025

NAME
COMPANY
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your email dated February 19, 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.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your email you have stated and made inquiry as follows:

> We are a CPA firm and one of our clients, COMPANY1 is in the party-entertainment business. They provide/rent equipment as part of their entertainment services, which are provided to colleges, universities, municipalities, and corporations. The equipment provided comes with supervision so that the equipment is never turned over to the control of the customer, particularly for liabilities reasons. Their customer event contracts do not segregate an "equipment rental" fee from the total fee for the event…in other words it's a package price, depending on the type of equipment the customer wants. Their website WEBSITE provides more clarity.
>
> Of course, the client is now asking about the new law that went into effect and how they should go about charging IL sales tax on their equipment rental,

assuming they are subject to the tax. Since they are providing supervision with the equipment, we weren't sure if they would be subject to the lease tax, or if the state would view their business as more a service business than an equipment rental business.

Assuming COMPANY1 is subject to the new tax, we had a few questions……
……Many of their customer events are outside of IL (UNIVERSITY, UNIVERSITY1, etc.) which we assume should be considered out of state sales, not subject to the IL sales tax?
…..For those clients that are having events based in IL, we assume that COMPANY1 should charge the sales tax rate based on where COMPANY1 is located, which is CITY, so TAX RATE%, or do we need to determine the tax rate at each location where the event is taking place?
…..How would the client determine the amount subject to the IL tax if their customer contract doesn't allocate between rental equipment and services provided?

Thank you in advance!

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. Retailers' Occupation Tax and Use Tax do not apply to sales of service. The Service Occupation Tax Act (SOT) imposes a tax upon persons engaged in this State in the business of making sales of service, based on tangible personal property transferred incident to sales of service.

The provision of a service in Illinois that is not accompanied by the transfer of tangible personal property is generally not subject to Retailers' Occupation Tax or Service Occupation Tax liability. The sale of service that is accompanied by a relatively insignificant or incidental transfer of tangible personal property would be subject to liability under the Service Occupation Tax Act.

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. Persons engaged in the business of making sales of service are subject to State

and local service occupation tax on all tangible personal property transferred by lease as an incident of a sale of service. See 35 ILCS 115/3. 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. For purposes of State and local service occupation taxes, the term "transfer" includes a lease. See 35 ILCS 115/2. 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. For sales of service, the tax applies to tangible personal property transferred by lease by persons engaged in the business of making sales of service in which leases are in effect, entered into, or renewed on or after January 1, 2025. 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 and 35 ILCS 115/3. For retail leases and tangible personal property transferred by lease by persons engaged in the business of making sales of service, tax is due at the lessor's State and local retailers' occupation tax or service occupation tax rate based on where the lease is sourced. See 35 ILCS 120/2-12(5.5) and 35 ILCS 115/12 incorporating 35 ILCS 120/2-12(5.5).

When the provision of tangible personal property includes an operator for the tangible personal property for a fixed or indeterminate period, the arrangement may constitute a lease taxable under the Retailers' Occupation Tax Act. If the operator is necessary for the equipment to perform as designed and is responsible for more than maintaining, inspecting, or setting up the tangible personal property, the arrangement is not a lease. When a purchaser enters into such an agreement to use tangible personal property for a predetermined period, but an owner operator retains possession and control of the tangible personal property, such agreement does not constitute a lease. The customer may gain access to the benefit of the tangible personal property, but an owner operator remains in possession and control of the property throughout its use under the agreement. In this situation, the customer does not have the unfettered right to possess or control the tangible personal property, and the transaction does not include any taxable transfer of tangible personal property. However, if the provision of tangible personal property includes an agent of the lessor to simply maintain, inspect, set up, or disassemble the tangible personal property, such arrangement is subject to the provisions of Article 75 of Public Act 103-592.

<u>True Object Test</u>

If it is determined that the transaction includes a taxable transfer of tangible personal property, it must be determined whether the transaction is a retail lease transaction or a transfer by lease of tangible personal property incident to a sale of service. To determine whether a transaction is a retail lease transaction or a transfer by lease of tangible personal

property incident to a sale of service, the lessor must determine the true object or substance of the transaction. "If the article sold has no value to the purchaser except as a result of services rendered by the vendor and the transfer of the article to the purchaser is an actual and necessary part of the service rendered, then the vendor is engaged in the business of rendering service and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail." *Spagat v. Mahin*, 50 Ill. 2d 183 (1971); *Velten & Pulver, Inc. v. Department of Revenue*, 29 Ill. 2d 524, 529; *Dow Chemical Co. v. Department of Revenue*, 26 Ill. 2d 283, 285; *Kellogg Switchboard & Supply Corp. v. Department of Revenue*, 14 Ill. 2d 434, 437. If the tangible personal property rented would have value even without the services a company provides, the substance of the transaction is the tangible personal property.

Sale of Service

If it is determined that the true object of the transaction is the service and that the tangible personal property is transferred by lease incident to a sale of service, tax on the transfer of the tangible personal property by lease is calculated under the Service Occupation Tax Act. Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. Tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon the serviceman's activities. The serviceman's liability may be calculated in one of four ways:

1) Service Occupation Tax on the separately stated selling price of tangible personal property transferred incident to service;

2) Service Occupation Tax on 50% of the servicemen's entire bill;

3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or

4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must

use 50% of the entire bill to the service customer as the tax base (the second method described above). Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

Sale at Retail - Inseparable Link Between Sale and Service Charges

However, if the true object of the transaction is the lease or rental of tangible personal property, any service charges, if inseparably linked to the lease or rental of the tangible personal property, are part of the lessor's costs of doing business and are includable in the lessor's taxable gross receipts. This is true even if the service charges are separately stated on the agreement or bill between the lessor and its customers.

When an "inseparable link" exists between the lease of tangible personal property and related service charges, including delivery charges, the related service charges are part of the gross receipts subject to the Retailers' Occupation Tax. See, for example, 86 Ill. Adm. Code 130.415(b)(1)(B)(i). An inseparable link exists when (a) the service charges are not separately identified to the lessee on the contract or invoice or (b) the service charges are separately identified to the lessee on the contract or invoice, but the lessor does not offer

the lessee the option to lease the property without the payment of service charges added to the lease or rental price of an item (e.g., the lessor does not offer the lessee the option to lease the tangible personal property separately from the related service, or the lessor does not offer, or the lessee does not qualify for, a free service option). 86 Ill. Adm. Code 130.415(b)(1)(B)(ii). In contrast, if the lessee can rent or lease the tangible personal property without payment of service charges to the lessor, then an inseparable link does not exist, and the service charges should not be included in the lease or rental price of the tangible personal property. 86 Ill. Adm. Code 130.415(b)(1)(B)(ii)-(iii).

The following example illustrates whether a service charge in a retail rental or lease transaction constitutes an inseparable link to the rental or lease charges. A business offers guided kayak tours that include the rental of a kayak for the one-hour tour duration. Renters are encouraged to participate in the tour but are allowed to venture off on their own. The business requires tour participants to use the provided rented kayaks. The business does not offer rentals of kayaks independent of purchasing the tour. The kayak rental is the true object of the transaction since the tour could not be done without the kayak, but the kayak rental would still have value without the tour. The charge for the tour is inseparably linked to the rental charges for the kayak, regardless of if they are separately stated, as you cannot rent the kayak without the tour charge. As such, the entirety of the proceeds of the transaction is includable in the business's gross receipts and subject to tax. However, if the business were to offer independent kayak rentals in addition to kayak tours, the charge for the tour would not be inseparably linked to the rental charges for the kayak. In this instance, if the business separately states the charge for kayak rental from the charge for the tour on the business's invoice, the charges for the tour would not be includable in the business's gross receipts for retailers' occupation tax purposes and would be a nontaxable service charge.

Sourcing

The lease of tangible personal property that is subject to the tax on leases under Article 75 of Public Act 103-592 is sourced as follows:

i) For a lease that requires recurring periodic payments and for which the property is delivered to the lessee by the lessor, each periodic payment is sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

ii) For all other leases, including a lease that does not require recurring periodic payments and any lease for which the lessee takes possession of the property at the lessor's place of business, the payment is sourced as otherwise provided under this Act for sales at retail other than leases.

See 35 ILCS 120/2-12(5.5) as amended by Article 75 of Public Act 103-592.

A lease requires recurring periodic payments if the lease agreement for the property provides for a fixed or indeterminate term and requires consideration to be broken into multiple payments due over the course of multiple return periods. If a lease agreement is fixed in duration and requires a single payment to be made in consideration for the lease of a specified item or items, the lease does not require recurring periodic payments.

Sourcing – Retail Leases

For sales at retail, if a lease does not require recurring periodic payments, pursuant to 35 ILCS 120/2-12(5.5), the payment is sourced as otherwise provided under the Retailers' Occupation Tax Act. Because the tax is imposed on the retail business of selling and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the retailers' occupation tax is owed. Rather, it is the jurisdiction where the seller is engaged in the business of selling that can impose the tax. *Automatic Voting Machs. v. Daley*, 409 Ill. 438, 447 (1951) ("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as such.") (citing *Mahon v. Nudelman*, 377 Ill. 331 (1941) and *Standard Oil Co. v. Dep't of Finance*, 383 Ill. 136 (1943)); see also *Young v. Hulman*, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax…imposes liability upon the occupation of selling at retail and not on the sale itself"). See, for example, 86 Ill. Adm. Code 270.115(b)(1). The Illinois Department of Revenue has created administrative rules that govern the sourcing of local retailers' occupation taxes. See, for example, 86 Ill. Adm. Code 270.115. The rules provide that:

> The occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price". *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 32 (citing *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943)). 86 Ill. Adm. Code 270.115(b)(2).

Some retailers are engaged in retail operations with selling activities in multiple jurisdictions within the State, or in jurisdictions located in more than one state. The selling activities that comprise these businesses "are as varied as the methods which men select to carry on retail businesses." *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Consequently, "it is...not possible to prescribe by definition which of the many activities must take place in [a jurisdiction] to constitute it an occupation conducted in [that jurisdiction] . . . . It is necessary to determine each case according to the facts which reveal the method by which the business was conducted." *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943); see also *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 36. See, for example, 86 Ill. Adm. Code 270.115(b)(3).

A seller incurs Retailers' Occupation Tax in a given taxing jurisdiction if its predominant and most important selling activities take place in that jurisdiction. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 322- 23 (1943); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraphs 30 through 35. See, for example, 86 Ill. Adm. Code 270.115(b)(5). The Department's regulations enumerate several "primary selling activities" and "secondary selling activities" to aid in this inquiry, which are listed at 86 Ill. Adm. Code 270.115(c)(1) and (4). "Primary selling activities" include:

A) Location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale;

B) Location where the seller takes action that binds it to the sale, which may be acceptance of purchase orders, submission of offers subject to unilateral acceptance by the buyer, or other actions that bind the seller to that sale;

C) The location where payment is tendered and received, or from which invoices are issued with respect to each sale;

D) Location of inventory if tangible personal property that is sold is in the retailer's inventory at the time of its sale or delivery; and

E) The location of the retailer's headquarters, which is the principal place from which the business of selling tangible personal property is directed or managed. In general, this is the place at which the offices of the principal executives are located. When executive authority is located in multiple jurisdictions, the place of daily operational decision making is the headquarters.

See, for example, 86 Ill. Adm. Code 270.115(c)(1). If three primary selling activities occur in the same location, that is the jurisdiction where you are engaged in the business of selling. If the primary selling activities occur in multiple jurisdictions, but no individual jurisdiction has more than two primary selling activities, you must consider the listed secondary selling activities to determine the jurisdiction where you are engaged in the business of selling. "Secondary selling activities" include:

A) Location where marketing and solicitation occur;

B) Location where the seller engages in activities necessary to procure goods for sale;

C) Location of the retailer's officers, executives or employees with authority to set prices or determine other terms of sale if determinations are made in a location different than that identified in subsection (c)(1)(A);

D) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed or fulfilled in a location or locations different from where they are received;

E) Location where title passes; and

F) Location where the retailer displays goods to prospective customers, such as a showroom.

See 86 Ill. Adm. Code 270.115(c)(4).

Every retailer in this State must determine the taxing jurisdictions where it is engaged in the business of selling with respect to each of its sales by applying the standards set forth in Section 270.115(c), except when a retailer is engaged in particular selling activities identified by a statute that specifies the taxing jurisdiction where retailers engaged in those activities shall remit retailers' occupation tax. See 86 Ill. Adm. Code 270.115(c). If you are engaged in any special selling activity where your remittance of retailers' occupation tax would be directed by statute rather than these rules, please refer to the applicable statute.

Except as provided in subsection (d), a retailer that is not engaged in the business of selling in a jurisdiction under subsection (c)(2) is engaged in the business of selling in the jurisdiction where its inventory is located under subsection (c)(1)(D), or where its headquarters is located under subsection (c)(1)(E), whichever jurisdiction is the location where more selling activities occur, considering both primary and secondary selling

activities. A retailer that is not engaged in the business of selling in a jurisdiction under subsection (c)(2) or (c)(5) is presumed to be engaged in the business of selling at the location of its headquarters absent clear and convincing evidence to the contrary. See 86 Ill. Adm. Code 270.115(c)(5) and (6).

Sourcing – Sales of Service

For sales of service, if a transfer of tangible personal property by lease incident to a sale of service does not require recurring periodic payments, pursuant to 35 ILCS 120/2-12(5.5), the payment is sourced as otherwise provided under the Service Occupation Tax Act. If the Illinois Service Occupation Tax on a transaction is being remitted to the Department by the serviceman, the serviceman shall also pay any applicable local service occupation tax to the Department on the same transaction if such serviceman's place of business is located in a taxing jurisdiction which has adopted a local service occupation tax. If a purchase order is accepted outside this State but the tangible personal property which is transferred by lease incident to the sale of service is in the inventory of a serviceman located within a jurisdiction with a locally imposed service occupation tax at the time of its transfer by lease (or is subsequently produced in such a jurisdiction) then delivered in Illinois to the service customer, the place where the property is located at the time of the transfer by lease (or subsequent production in the jurisdiction) will determine where the serviceman is engaged in business for local service occupation tax purposes with respect to such sale of service. See 86 Ill. Adm. Code 280.115.

Interstate Commerce

Where tangible personal property is located in Illinois or subsequently produced in Illinois at the time of its lease, and then delivered to the lessee in Illinois, the lessor is taxable if the lease is at retail. 86 Ill. Adm. Code 130.605(a). The place at which the lease agreement is negotiated and executed is immaterial. Further, the place at which the lessee resides is also immaterial. 86 Ill. Adm. Code 130.605(a)(3).

If the lease occurs in Illinois, the lessee must pay the Use Tax to the lessor at the time of purchase. The lessors 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 lease. See 86 Ill. Adm. Code 150.130. If the lessor does not collect the Use Tax from the lessee for remittance to the Department, the lessee is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

Mere possession in Illinois is considered a use. Consequently, if the lease occurs in Illinois, the lessee must pay the Use Tax to the lessor. Please note that a lease that does not require recurring periodic payments is taxable even though a lessee that receives physical

possession of the property in this State immediately transports the property out of this State for use outside the State. See 86 Ill. Adm. Code 130.605(a)(2). The State of Illinois has no specific exemption for leases by foreign or domestic travelers if the property is delivered and used in Illinois. Section 130.605 identifies several exceptions to this rule.

Section 130.605(c) states that the gross receipts from sales are not subject to tax when a sale is made in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery and retrieval are actually made. In accordance with Article 75 of P.A. 103-592, leases are not subject to tax when a lease is made in which the lessor is obligated, under the terms of an agreement with the lessee, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State by the lessee, and which property is to be retrieved by the lessor from outside this State at the conclusion of the lease, provided that such delivery and retrieval are actually made. Such leases are leases in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax. Even if the lessee arranges for the common carrier or pays the carrier who is to make the delivery, the sale will still be exempt. However, it is critical that the lessor is shown as the consignor or shipper on the bill of lading. If the lessee is shown as either the consignor or the shipper, the exemption will not apply. 86 Ill. Adm. Code 130.605(d).

Consistent with Section 130.605(f), the lessor will be required to retain in their records documentation to support any deductions taken on their tax returns. Such documentation must demonstrate there was an agreement between the lessor and the lessee for the lessor to deliver the tangible personal property from inside the State to a point outside the State and that there was also a bona fide retrieval of the property by the lessor from a point outside of the State back to inside the State at the conclusion of the lease. The bona fide delivery to and retrieval from outside the State must be to the Department's satisfaction. Depending on the mode of delivery and retrieval, the most acceptable proofs include:

1) If shipped by common carrier, a waybill or bill of lading requiring delivery outside the State and the same documentation for the return of the tangible personal property showing origination outside the State and delivered to a destination in the State;

2) if sent by mail, an authorized receipt from the U.S. Post Office for articles sent by registered mail, parcel post, ordinary mail or otherwise, showing the name of the addressee, the point outside Illinois to which the property is mailed to and mailed from for return, and the date of the mailings; if the receipt does not comply with these requirements, other supporting evidence will be required; or

3) if sent by lessor's own transportation equipment, a trip sheet signed by the person making delivery for the lessor and showing the name, address and signature of the person to whom the goods were delivered and from whom the goods were retrieved outside this State; or in lieu thereof an affidavit signed by the lessor or the lessor's representative, showing the name and address of the lessor, the name and address of the lessee and the time and place of the delivery and retrieval outside Illinois by the lessor; together with other supporting data as required by Section 130.810 and 35 ILCS 120/7.

86 Ill. Adm. Code 130.605(f).

The same interstate commerce principles apply to transfers of tangible personal property by lease as an incident of sales of service. The serviceman does not incur Service Occupation Tax liability on property which he transfers by lease as an incident to a sale of service under an agreement by which the serviceman is obligated to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to this State by the lessee, and which goods are to be retrieved by the serviceman from outside this State at the conclusion of the lease, provided that such delivery and retrieval are actually made. Such sales of service are deemed to be within the protection of the Commerce Clause of the Constitution of the United States. To establish that the selling price of property transferred by lease as an incident to any given sale of service is exempt because the property is delivered by the serviceman from a point within this State to a point outside this State and retrieved from a point outside this State under the terms of an agreement with the lessee, the serviceman will be required to retain in its records, to support deductions taken on its tax returns, proof which satisfies the Department that there was such an agreement, bona fide delivery to, and bona fide retrieval from outside this State of the property transferred by lease as an incident of the sale of service.

Generally, the rental of equipment for which the lessor provides a person only for supervision or maintenance purposes would be considered a retail rental of the equipment. As such, tax on the rental transaction would be analyzed as a retail lease, with the tax base determined under an inseparable link analysis, and sourcing and interstate commerce questions resolved under a retail lease analysis.

I hope this information is helpful. If you require additional information, please visit our website at https://tax.illinois.gov/ or contact the Department's Taxpayer Information Division at 800-732-8866.

Very truly yours,

Alexis K. Overstreet
Deputy General Counsel

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