

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 130.220. (This is a GIL.)

May 23, 2007

Dear Xxxxx:

This letter is in response to your letter dated April 30, 2007 in which you request 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:

Please advise if an acquisition fee on a leased motor vehicle is in any way subject to sales/use tax in your state. We have read your opinions that it is not taxable, but many in the Illinois sales tax department claim that is [sic] if included in the sale (lease) of the vehicle. Chrysler, GM etc. do not tax this fee, but Ford Motor Credit does, and furthermore, will not accept a contract in the State of Illinois if the customer/lessee does not pay the tax.

Thank you in advance for your prompt attention to this matter.

DEPARTMENT'S RESPONSE:

Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: 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 lessors are 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 the 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 130.220. As end users of tangible personal property 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 automobiles in Illinois except for automobiles leased under 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.

If the contract involved is a true lease, the lessee is not subject to Retailers' Occupation Tax or Use Tax on the lease payments of a vehicle for more than one year. As a result, the lessee is not subject to tax liability for any related lease charges such as late charges, vehicle disposal fees, excess wear and tear fees and excessive mileage fees imposed at the end of the lease.

If the transaction is a conditional sale, please see 86 Ill. Adm. Code 130.420 and 130.410, the Department's rules regarding finance charges, penalties, discounts, and costs of doing business.

Without reviewing the sales or lease contracts, we cannot provide you with specific information in regards to "acquisition fees." However, the information provided to you in this letter may provide you with general guidance regarding those 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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
Senior Counsel, Sales & Excise Taxes

TDC:msk