

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.)

November 29, 2007

Dear Xxxxx:

This letter is in response to your letter dated July 20, 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](http://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:

I have a question about sales and use tax. Here is the scenario happening with us:

ABC sells and services communications equipment. Occasionally we have customers decide after we have billed them directly (including Illinois sales/use tax) that they want us to bill a lease company (most lease companies have sales & use tax exemption certificates on file with us). We do business in all 50 states and each state has special requirements with this circumstance.

Can you please explain the requirements for Illinois in regards to this situation?

Can we then bill the lease company and apply for our money back with Illinois (if we have already filed and paid our sales & use tax return)? Or does the customer need to know at the time of sale that we are to bill a lease company?

Please feel free to call or email me if you have any questions! I appreciate your assistance with this situation.

**DEPARTMENT'S RESPONSE:**

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 based on the fair market value of the property in order to maintain the character of the true lease. A lessor of tangible personal property under a true lease in Illinois is deemed the end user of the property to be leased. See 86 Ill. Adm. Code 130.220. As the end user of tangible personal property located in Illinois, the lessor owes Use Tax on its cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, the lessee incurs no tax liability.

As stated above, in the case of a true lease, the lessor of the property being used in Illinois would be the party with the Use Tax obligation. The lessor would either pay its supplier, if its supplier was registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessor had already paid taxes in another state with respect to the acquisition of the tangible personal property, it 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, a lessor may not "pass through" its tax obligation to the lessee as taxes. However, a lessor and lessee may make a private contractual arrangement for a reimbursement of the tax to be paid by the lessee. If the lessor and lessee have made private agreement whereby the lessee agrees to reimburse lessor for the amount of the tax paid, then lessee is obligated to fulfill the terms of the private contractual agreement.

The above guidelines are generally applicable to all true leases of tangible personal property in Illinois. There are some limited exceptions to the general rules. There is an exemption from Retailers' Occupation Tax for sales of tangible personal property to lessors who lease that property to governmental bodies under leases of one year or longer. See 86 Ill. Adm. Code 130.2012. Also, the sale of computers and communications equipment and equipment used in the diagnosis, analysis, or treatment of hospital patients is exempt when sold to lessors who lease such property under leases of one year or longer. See 86 Ill. Adm. Code 130.2011.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) 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,

Richard S. Wolters  
Associate Counsel

RSW:mzk