

Lessors who are otherwise engaged in the business of selling like-kind property incur Retailers' Occupation Tax liability on all their sales, including sales of items coming off lease that are no longer needed for their rental inventories. See 86 Ill. Adm. Code 130.2013(h). (This is a GIL.)

September 12, 2008

Dear Xxxxx:

This letter is in response to your letter dated December 7, 2006, in which you request information. As we discussed by telephone, the attorney assigned to that letter has been out on extended leave and we apologize for the lengthy delay in responding to your inquiry. 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:

Facts: Our client (ABC) buys various machines from their supplier (X). The machines are either rented/leased to ABC customers or sold to them at retail. At the time of purchase ABC must inform X whether the machine it is purchasing will be rented to ABC customers or sold to them. This is because different finance schemes are allowed by X based on whether ABC will sell or lease the machine. X is an out of state company, presumably without nexus in Illinois as it does not charge a sales tax on any purchase of the machines. ABC, on its balance sheet, accounts for items held for sale as an item of inventory and accounts for items held for rent/lease in a separate account not part of retail inventory. Also, ABC charges a sales tax on items sold to customers out of retail inventory (i.e. [sic] not rented). ABC currently self-assesses a use tax on the machines held for rent on Form ST-1 as the machines are not an item requiring titling in Illinois. Over the course of time and for various business reasons, ABC will decide to move an item from rental inventory to retail inventory to make the machine available for sale to ABC customers. ABC has become aware of regulation 130.2013(h)(2) allowing a credit for prior use tax paid on items subsequently sold at retail. The regulation states:

If a lessor filed a return and paid the tax directly to the Department, the lessor must file a claim to recover it. (See Subpart O.) However, this claim

cannot exceed the amount of Retailers' Occupation Tax incurred by the lessor/retailer when he sells the item.

Issue/Question: Because there does not appear to be a subpart 'O' (giving guidance) as described in the regulation, how does ABC report the credit? Can they claim the credit on an ST-1 in the month that the sale to their retail customer transpires or does ABC need to amend the previous ST-1 that contained the self-assessed use tax for the machine now sold?

We hope that an amended ST-1 for the month that included the original use tax assessment is **not** required as it is administratively burdensome and runs the risk of being outside the statute of limitations for amending a return.

Please give insight as we are unable to find any published guidance. The instructions to Form ST-1 are also not helpful.

DEPARTMENT'S RESPONSE

When a lessor in a true lease situation subsequently sells a leased item, he may or may not incur a Retailers' Occupation Tax liability depending upon whether the lessor is otherwise engaged in selling like-kind items at retail. If a lessor is engaged in selling that type of item at retail, the lessor will incur Retailers' Occupation Tax liability on the sale of the leased property. However, the lessor would be entitled to take a credit for taxes previously paid on the item to the extent that the credit does not exceed the amount of Retailers' Occupation Tax incurred by the lessor/retailer when he sells that item. See the enclosed copy of 86 Ill. Adm. Code 130.2013(h). This provision reorganizing this credit was added to the Department's administrative rules on January 17, 2002.

In terms of Subpart "O," you can find it in the table of contents for the regulations:

SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section:

130.1501 Claims for Credit – Limitations – Procedure

130.1505 Disposition of Credit Memoranda by Holders Thereof

130.1510 Refunds

130.1515 Interest

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/MPM:msk
Encl.