

Information regarding sales tax liabilities in lease situations may be found at 86 Ill. Adm. Code 130.220 and 130.2010. (This is a GIL.)

March 9, 2011

Dear Xxxxx:

This letter is in response to your letter dated October 12, 2010, in which you request a Private Letter Ruling. 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:

Based on a recent sales tax audit (Jan 06 thru March 08), we were noted for non payment [sic] of use tax on rentals. We are reviewing our records now for possible liability after March 2008.

Several questions have arisen during this review process for which we are requesting a private letter ruling.

Background: COMPANY is a forklift distributor located in CITY/ STATE. The company is registered in STATE and Illinois for sales tax. COMPANY rents lift trucks on a daily, weekly, and monthly basis to customers. Our units are purchased for resale and are rented on a short term basis to customers, or they are use [sic] for customer demos. These units are for sale at anytime [sic] and are our best source of used equipment. These are not leases but short term rentals. The customer dictates to us the amount of time the rental is needed and signs a rental contract agreeing to pay the rental amount. Customers have the option to buy the unit at anytime [sic].

#1 If we pay STATE sales tax on the unit when it was first purchased, can the payment of the sales tax upfront to STATE be used to offset any Illinois use tax? We are of the opinion it can according to ILCS Chapter 35 105/3-55 (d). We have received conflicting answers from the Department of Revenue staff.

#2 We have a resale exemption and primarily engage in the business of making retail sales. These units are available for sale and may be rented in an interim basis until they are sold. Why are they not tax exempt?

#3 Are units subject to use tax no matter how they are classified on the books (inventory, rental fixed asset, demo inventory)?

#4 Is a useful life of 3 years acceptable as reasonable allowance for depreciation on all units. A recent Illinois sales tax auditor indicated that this is the estimated life he uses.

#5 Our major manufacturer acts as a pass through entity on 'National Accounts.' National Accounts (BUSINESSES) are COMPANY's customers but the invoicing is handled by our manufacturer. The manufacturer collects amounts due from our customer and pays COMPANY. Collection and remittance of any sales tax is handled by the manufacturer. Can the collection of any STATE sales tax on COMPANY rental units be used to offset the Illinois use tax on a rental unit before it was rented in Illinois?

Your immediate response to these issues is greatly appreciated. There is a tax amnesty program (10.1.10 thru 11.8.10) that we want to take advantage of before it expires.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). We note that you are currently under audit. Accordingly, the Department has decided to respond with a GIL.

Although we cannot address your specific transactions in this General Information Letter, we hope you find the following helpful.

LEASING

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 a lessor is guaranteed at the time of the lease that the leased property will be sold to the lessee, that transaction is considered to be a conditional sale at the outset of the transaction. Persons who purchase items for resale under conditional sales contracts can avoid paying tax to suppliers by providing certificates of resale that contain all the information set forth in 86 Ill. Adm. Code 130.1405. All receipts received by a lessor/retailer under a conditional sales contract are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010.

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. As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

INTERIM USE AND DEMONSTRATION EXEMPTION

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, a Use Tax is also 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.

However, Section 2 of the Use Tax Act states in part that "'Use' does not mean the demonstration use or interim use of tangible personal property by a retailer before he sells that tangible personal property." See 35 ILCS 105/2. See also the Department's regulation at 86 Ill. Adm. Code 150.306 that describes the Interim Use and Demonstration Exemption. Specifically, subpart (a) which provides guidance regarding when tangible personal property qualifies for the interim use exemption and subpart (b) which provides guidance regarding when tangible personal property qualifies for the demonstration exemption.

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.

Very truly yours,

Debra M. Boggess
Associate Counsel

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