

An out-of-state leasing company that sells a vehicle located in Illinois at the end of a lease to an Illinois purchaser must report the sale on Form ST-556, Sales Tax Transaction Return. See Illinois Department of Revenue Compliance Alert 2011-09 (April 2011). (This is a GIL.)

April 4, 2012

Dear Xxxxx:

This letter is in response to your letter dated January 27, 2011 in which you request information and to the various telephone discussions with our office since receipt of the letter. 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:

Initially, I want to thank you for the advice and candid discussions over the last 18 to 24 months on the RUT-25 vs. ST-556 issue. As you may recall, our client is an out-of-state leasing company that transacts business in a number of states, including Illinois; however, our client has no business location in this state. The company's leasing customers are referred by Illinois automobile dealers. The client's only contacts with Illinois are the automobiles, which are located in the state during the life of the lease or brought into the state upon a lessee move. Our client sells some of the automobiles to its Illinois lessee(s) when the automobiles come off lease. It is these sales that present the issue.

As we discussed, our client believes that the Department's divergent authorities essentially provided them with an option to use a ST-556 or have the purchaser file a RUT-25 when the client sells an automobile in Illinois. I relayed our discussion to the client and your assertion that it must use Form ST-556 to properly report the sales of the leased vehicles. Our client, however, has received past verbal advice from either processing or the registration section that appears to differ from your advice. During these calls, the Department told the client that the use of the RUT-25 is acceptable. The client is confused by the seemingly contradicting statements, and, as a result, it drafted the attached Statement of Facts, Questions and Relevant Authorities. My client

hopes that you will be able to address the questions raised in the document. The document is substantially similar to the document I sent to you prior to our discussion last summer.

Please consider the attached as our client's request for a General Information Letter. Please let me know if you have any questions or concerns and I will try to address them as quickly as possible. Again, I want to thank you for your assistance on this and other matters.

Your attachment titled, "Statement of Facts, Questions and Relevant Authorities", reads as follows:

We are an out-of-state auto leasing company that is a subsidiary of a large bank. We ('Lessor') do not maintain a place of business, or have employees or representatives who operate, in Illinois, though we lease automobiles to individual residents of Illinois. We are not registered with the Illinois Department of Revenue ('DOR'), do not have an Illinois Business Tax number and file no sales or use tax returns of any type with the DOR (except for the CITY). We possess a Lease Dealer's License in a state other than Illinois and have licensed salespersons within that other state. The lease only license is not however a retail license, but allows for the sale of the lease vehicle to the lessee. No 3rd party sales are allowed other than to licensed dealers.

The leases, which exceed one year in length, are originated by Illinois automobile dealers whose customers choose to lease cars and who complete standard form lease agreements furnished by the lessor. At the time of lease signing at the dealership, one of two situations occur: the lessee pays use tax directly to the dealer in cash, which in turn is remitted directly to the DOR by the dealer under the dealer's IBT #, or the use tax amount is financed into the lease – in this scenario the out-of-state auto leasing company funds the use tax amount to the dealership as part of the purchase of the auto and lease contract – the dealer would then remit that use tax payment directly to the DOR under the dealer's IBT #. Upon execution of the agreements, the auto is sold to Lessor and the lease is assigned to Lessor. The dealer completes, submits, and retains a copy of the ST-556 form. The lessor conducts these transactions electronically or by U.S. mail, from outside Illinois.

Upon termination of the leases, some lessee/customers choose to purchase the vehicle from the lessor. Upon such sale by the lessor, use tax is collected from the purchaser and the lessor furnishes the purchaser with a cashier's check payable to the IL DOR, in the amount of tax collected. These taxes are made part of the payoff quote as a courtesy by the leasing company to ensure the customer has, or can obtain sufficient funds, to complete their ownership transfer and to reduce future risk of legal claims or citations to the lessor due to the lessee not completing the ownership transfer due to lack of tax funds. These transactions are all effected by mail, phone or electronically by Lessor's personnel, who all are located outside Illinois. The lessor never has any face-to-face contact with these buyers.

The purchaser then takes the assigned title and check payable to the DOR to a Secretary of State ('SOS') office to effect title transfer and payment of tax. Form RUT-25 is completed at that time, by the purchaser at the direction of the SOS office.

Several times, the lessor has inquired of the DOR, by telephone, about filing either Form ST-556 or Form RUT-25 to report and remit tax collected upon these sales. It

was informed, in at least one of those calls, that it could not use Form ST-556 unless it possessed a Dealer's License issued by the SOS. For several reasons, lessor is not eligible for such a license. Lessor has been informed by DOR personnel, in each of those calls, that its practices and its customers filing Form RUT-25 are correct.

Form RUT-25 is for use by purchasers of vehicles, not sellers, as clearly stated in the instructions to the form. There is no place on this form for a seller to sign it. DOR Publication 76 states on page nine, under 'Who must file Form RUT-25?' that Form RUT-25 must be filed by a person who purchases an item required to be titled in Illinois 'from an out-of-state dealer, other retailer, lending institution or leasing company...' Thus, on the basis of this DOR guidance, it would appear that the practices of Lessor and its customers comply with Illinois law, as Lessor is an 'out-of-state' lessor.

On the other hand, Form ST-556 – Sales Tax Transaction Return – has a set of instructions for 'Out-of-State Lessors.' These instructions state that 'if you are an out-of-state lessor who is also in the business of selling used vehicles...to Illinois buyers and the items are located in Illinois at the time of sale, you must report these sales on Form ST-556...' The source of this instruction appears to be Regulation Section 130.605(a).

The Lessor wishes to be in compliance with Illinois filing requirements. Lessor believes that the guidance in Publication 76 and the instructions to Form ST-556 present two options for doing so. Customers filing Form RUT-25 is the more desirable option to Lessor, due to the out-of-state nature of their business, which presents practical obstacles to effectively filing Form ST-556, as described in detail below.

The SOS requires that titles be transferred and vehicles be registered promptly after a purchase. Vehicles will not be so titled and registered without proof of use tax payment. Payment of tax to a retailer is often evidenced by a 'receipted' copy of Form ST-556. This form is required to be filed within 20 days of a sale. Absent a receipted copy of Form ST-556, a Form RUT-25 (or Form RUT-50) is completed and tax is paid at the time of titling. The instructions to Form ST-556 state that both the seller and buyer must sign the form.

If an out-of-state leasing company, such as Lessor, is required to file Form ST-556, the 'natural' way to comply would be as follows:

1. Lessor prepares Form ST-556 and mails it to the Illinois purchaser, requesting the purchaser to sign it.
2. The purchaser signs the form and mails it back to Lessor.
3. Lessor then mails it to the DOR, requesting a receipted copy be mailed to the purchaser.
4. Upon receipt of the receipted copy of Form ST-556 mailed by the DOR, the purchaser may now re-title and register the vehicle.

Three practical issues are presented by this approach:

1. Lessor is concerned that the mailings of the form will not likely result in a timely filing of Form ST-556 with the DOR or a receipted copy of Form ST-

556 being received promptly to enable timely re-titling and registration of the vehicle.

2. Some number of such purchasers do not make it a priority to act promptly and responsibly in such matters. More than a few such customers never even bother to re-title the vehicles until they later want to sell them, sometimes years later. This fact can put the lessor at risk of not being able to file Form ST-556 on a timely basis.
3. Publication 76, at page 42, states that receipted copies of Form ST-556 should not be requested 'as a general practice.'

A process has been identified that would enable timely compliance (If Form ST-556 must be filed), but this process would omit obtaining the purchaser's signature on Form ST-556 before filing it with the DOR.

Therefore, we have the following questions for the DOR:

1. Is the lessor required to file Form ST-556 under the facts described above, or may it continue its current practices?
2. If Lessor is required to file Form ST-556, would it be required to collect any county, city or district taxes based on the purchaser's address or would it only be required to collect 6.25%?
3. If Form ST-556 is required, can an Illinois Secured Power of Attorney form or IL 2846 Power of Attorney from the purchaser be used by Lessor to sign the form on behalf of the purchaser or may form ST 556 be left unsigned by the purchaser?
4. If Form ST-556 is required, would the DOR routinely accept Forms ST-556 that are not signed by a purchaser due to a) lessor being out-of-state and b) the lack of cooperation from buyers to get documents signed within the 20 day filing time or even signed at all? We note that neither 35 ILCS 120/3 nor Regulation Sec. 130.540(b)(2) require the buyer's signature on such forms.
5. Can 'receipted' copies of the ST-556 be used as a standard practice, due to lessor's circumstances of being an out-of-state business and having no direct (face-to-face) contact with the purchaser? We note that 35 ILCS 120/3 and Regulation Sec. 130.540(e) require the DOR to issue such receipts. If such receipted copies are mailed directly to the buyers by the DOR, it would appear that obtaining the buyer's signature serves no particular purpose.
6. Does Lessor need to provide copies of the customer's drivers [sic] license and proof of insurance with Form ST-556?
7. Is there any opportunity to electronically file Form ST-556 for out-of-state leasing companies without using an outsourced vendor?

8. If Form ST-556 is required to be filed in this case, what penalties apply with regard to not filing this form, and under what circumstances would they apply? Would the DOR 'accept' the customer-filed Forms RUT-25 as satisfying Lessor's obligation for prior sales? We note that 35 ILCS 120/3 and Regulation Sec. 130.540(g) provide that such use tax payments by purchasers 'shall be credited by the Department to the proper retailer's account with the Department...'
9. If Lessor remits tax utilizing Form ST-556 would it then be subject to any SOS requirements as required for an Illinois motor vehicle dealer?
10. If Lessor starts filing Form ST-556 with the DOR, would the SOS require Lessor to complete the title\registration transfer on behalf of the customer?
11. Will the DOR provide us written responses to all of our questions?
12. If Form ST-556 is required, would the DOR hold the lessor to the requirement outlined in Title 86 Part 130 Section 130.540 (b)(1)? . 'Such forms will be numbered. The Department will keep a record of all of these forms which it supplies to a given retailer, and he (retailer) is responsible for accounting to the Department for all such forms. If a transaction reporting return form should be spoiled, the retailer should mark it 'voided' and retain it in his books and records for 42 months.' The lessor could not prevent a customer from losing or not returning the ST-556 mailed to them for signature. What are the consequences imposed by the DOR on the lessor due to lack of accountability of the ST-556 forms?

DEPARTMENT'S RESPONSE:

As we have previously discussed with you, the Department issued Compliance Alert 2011-09 addressing some of the questions you raise. The Alert makes clear that an out-of-state leasing company that sells a vehicle located in Illinois at the end of a lease to an Illinois purchaser must file form ST-556, Sales Tax Transaction Return rather than form RUT-25, Vehicle Use Tax Transaction Return. Under Illinois law, a lessor selling passenger cars coming off lease is statutorily deemed to be a retailer engaged in the business of selling such passenger cars. See 35 ILCS 120/1c. If a sale takes place outside Illinois but the tangible personal property which is sold is in an inventory of the retailer located in Illinois, the place where the property is located at the time of the sale will determine where the seller is engaged in business. See, for example, 86 Ill. Adm. Code 270.115(b)(3). If the inventory, such as a leased passenger car that is being sold to the lessee at the end of the lease, is located in Illinois at the time it is sold, then Retailers' Occupation Tax is owed on that sale.

To find the appropriate tax rate for each sale, use the "Tax Rate Finder" on the Department's web site at tax.illinois.gov. Use the rate listed for "Vehicle (ST-556)" at the purchaser's location. Depending on the location of the vehicle at the time of sale, in addition to the State rate of 6.25%, the rate may also include certain local taxes such as a Metro-East Mass Transit District, Regional Transportation Authority, or County Water Commission Retailers' Occupation Tax on titled or registered property.

The Retailers' Occupation Tax requires that retailers sign returns, including ST-556's. See 86 Ill. Adm. Code 130.525. You have asked if a power of attorney may be used to sign a return on behalf

of a purchaser. A properly completed Power of Attorney form (IL-2848 Power of Attorney or other legally sufficient form) may be used to authorize a party to sign a return on behalf of another party.

The Retailers' Occupation Tax Act provides that "[t]he transaction reporting return and tax remittance or proof of exemption from the Illinois use tax may be transmitted to the Department by way of the State agency with which, or State officer with whom the tangible personal property must be titled or registered (if titling or registration is required) if the Department and such agency or State officer determine that this procedure will expedite the processing of applications for title or registration." (35 ILCS 120/3) Issuing receipted copies of tax returns is not intended to be a common practice. Rather, the more common practice is to file the ST-556 directly with the Illinois Secretary of State along with all other required Secretary of State paperwork. It is our understanding that an out-of-state leasing company that sells a vehicle off-lease to an Illinois customer may file title/registration documents as well as the ST-556 with the Illinois Secretary of State even though the out-of-state leasing company does not possess an Illinois Dealer's License issued by the Illinois Secretary of State. Please pursue this issue as well as the other issues you raise in this letter related to the Secretary of State's policies and procedures directly with the Secretary of State's Office.

When form ST-556 is filed by a retailer, the Department of Revenue does not require a copy of the buyer's driver's license or proof of insurance. You may want to check with the Secretary of State's Office to inquire whether they have any requirement related to this.

The electronic filing programs for Form ST-556 are currently conducted by two companies: Computerized Vehicle Registration (CVR) and Electronic License Services (ELS). Please see the Department's website for more information on this. If, however, you file paper ST-556 returns, it is important to keep track of ST-556 returns the Department supplies to you. If a return or returns are not accounted for, this could result in the Department's Audit Division inquiring further into those transactions.

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.

Sincerely,

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