

This letter concerns the rolling stock exemption. See 86 Ill. Adm. Code Section 130.340.
(This is a GIL.)

April 4, 2014

Dear Xxxx:

This letter is in response to your letter dated February 5, 2014, 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:

I am writing to request your opinion as to the sales tax rate applicable and the required documents concerning the sale of trailers pulled behind over-the-road-tractors.

Statement of Facts & Analysis

Our client currently rents trailers, however is considering sales of the trailers to its customers. Customers would pick up the trailers from our clients' in-state location.

1. What are the general guidelines for taxing on trailer sales in your state?
2. Should tax be charged on the invoice at the time of sales?
3. If the customer is claiming they are tax exempt, what documentation do they need from their customer at the time of sales?

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is 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.

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 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. See 86 Ill. Adm. Code 130.2010.

A true lease generally has no buy out provision at the close of the lease. If a buyout 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 sale, purchase or use 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.

Under Illinois law, lessors may not "pass through" their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where the lessees agree to reimburse the lessors for the amount of the tax paid, then the lessees are obligated to fulfill the terms of the private contractual agreements.

ROLLING STOCK EXEMPTION

Under the rolling stock exemption, the Retailers' Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce or lessors under leases of one year or longer executed or in effect at the time of purchase to interstate carriers for hire for use as rolling stock moving in interstate commerce. In addition, notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire. See 86 Ill. Adm. Code 130.340. For parts and equipment purchased for qualifying trucks and trailers, please see subsection (b) and subsection (j)(2) of Section 130.340.

It is not the type of item that determines whether or not it qualifies as rolling stock, rather how the item is used by a qualifying interstate carrier. Not all items of tangible personal property used by an interstate carrier for hire qualify for the rolling stock exemption. The exemption is applicable to

equipment or parts only if they become a component part of qualifying rolling stock and to equipment which, though not physically incorporated, is dedicated to qualifying rolling stock and participates directly in the transportation process.

In order to claim the exemption, retailers and servicemen must obtain a properly executed exemption certification from the purchaser and retain this certification in their books and records. Exemption certifications must comply with the requirements of subsection (e) of Section 130.340. Form RUT-7, Rolling Stock Certification, which can be found on the Department's website, may be used to provide the required certification to document the rolling stock 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,

Richard S. Wolters
Associate Counsel

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