ST 03-0046-GIL 03/28/2003 LEASING

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 35 ILCS 120/1 et seq. (This is a GIL.)

March 28, 2003

Dear Xxxxx:

This letter is in response to your letter dated December 6, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at http://www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

> I am trying to clarify a question regarding sales tax. My question involves a lease with a $5.00 residual value or buyout. If a Lessee enters into a lease with a term of anywhere from 12 to 60 months and the sales tax was paid up front at the time of registration based on the purchase price of the vehicle, less the trade value if the customer had one, then at the end of the lease ownership is transferred to the Lessee for the $5.00 buyout how can additional tax on the fair market value be do again at that time? We had two leases that this came up on. How should the vehicle be registered originally so that this does not occur? The license plates are already in the customer's name, so it is obvious that it is the same person(s) that has always had possession of the vehicle during the lease.
>
> I also have a second scenario that I have a question on. In a lease that was originally registered in different state, sales tax paid upfront on the purchase price, then the lessee moves to Illinois. There are no taxes due when the vehicle is moved to Illinois because the tax rate in the previous state was equal to or higher than the Illinois rate and there is also the 2% per month depreciation credit for length of time the vehicle was in service. Then at the end of the lease if the ownership would be transferred to the customer for the $5.00 buyout fee would there be additional sales tax due at that time?
>
> Thank you in advance for your prompt response to these questions. You may mail the response, fax it, or if you have any questions you may call me.

Please note that 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.

Sales tax on the purchase price of a motor vehicle under a conditional sale is due up front at the beginning of the lease. This is because the vehicle is being sold. All consideration, including the treatment of finance charges, is explained at 86 Ill. Adm. Code 130.420.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk