

For Retailers' Occupation Tax and Use Tax liability purposes, there are two types of leasing situations: conditional sales and true leases. See 86 Ill. Adm. Code 130.2010. (This is a GIL.)

July 31, 2009

Dear Xxxxx:

This letter is in response to your letter dated February 26, 2009, 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](http://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:

Our company is a licensed Illinois mobile home dealer. We request your opinion on the sales and use tax treatment of certain transactions.

In addition to being a mobile home dealer, our company owns mobile home parks in Illinois. On occasion, we acquire a **used** mobile home located in one of our mobile home parks. In some instances, we lease these homes to tenants on a lease with option to buy contract. The tenant has no obligation to purchase the home, and can cancel the lease on 30 days notice without any penalty. On our books, the mobile home is treated as a depreciable asset like an apartment building. The lease contract has a sliding scale purchase price, i.e. the more lease payments made, the lower the purchase price. After a six year period, the lease option price would be very low, namely an amount equal to the monthly lease payment.

Our question is whether the sale to the tenant is a taxable sale and treated like a new home sale or is it treated as a sale subject to the use tax based on the age of the mobile home as is the case of an individual to individual sale? If it is treated like the sale of a new home, then what is the sale price? Is it the option price when the lease agreement is signed or is it the option price at the time the tenant decides to purchase the home?

**DEPARTMENT'S RESPONSE:**

We do not have enough information to make a specific ruling regarding these transactions. However, we hope the following information is helpful. Note, for purposes of this response, we are assuming that the mobile homes you lease to tenants remain tangible personal property and are not incorporated into real estate.

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 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.

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.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://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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