

The question of whether a lessor's sale of tangible personal property coming off lease that is no longer needed for the lessor's rental inventory is subject to Retailers' Occupation Tax liability depends on whether the seller is strictly a lessor, or whether the seller is otherwise engaged in the business of selling like-kind property. See 86 Ill. Adm. Code 130.2013. (This is a GIL).

July 24, 2012

Dear:

This letter is in response to your letter received by the Department on June 29, 2012, 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:

On June 13, 2012 I purchased a MAN LIFT WORK PLATFORM. I made this purchase at the COMPANY at STREET, CITY, IL.

This is an item off of the rental company's rental inventory. The reason that they wanted to sell this one is that they had bought a newer one and did not need three of them. They do not sell these man lift work platforms on a regular basis as part of their business. The seller is strictly a lessor whose sale of this item was because the item was no longer needed for his rental inventory.

The owner of the rental company and myself were not sure if I should pay a sales tax or not. Not wanting either of us to get in trouble I went ahead and paid the sales tax. I told him that I would check with the Department of Revenue. He told me that was fine and that he would check with his accountant.

A couple of days later after speaking with an agent at the Department of Revenue and reviewing [sic] Part 130 section 130.2013 paragraph E I made a copy of this rule and took it to the owner of the rental company. He told me that this looked fine and reasonable but that he had not heard back from his accountant yet.

About 2 weeks had gone by so I called the owner of the rental company today June 29 2013. He told me that his accountant stated, that since the rental company purchased this item at an auction and did not pay a sales tax that I had to pay the sales tax when I purchased it out of his rental inventory. This item is not a Titled item.

So now I don't know who is correct. I am not sure if I should have paid a sales tax or not.

I am requesting a letter of rule so that we can close this matter. I appreciate your expertise in this matter and look forward to hearing from you.

## **DEPARTMENT'S RESPONSE:**

### Sales Tax

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.

### Leases

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. 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 person under a conditional sales contract are subject to Retailers' Occupation Tax at the time they are received. 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.

### Sales Of Items Coming Off Lease That Are No Longer Needed In A Rental Inventory

The question of whether a lessor's sale of tangible personal property coming off lease that is no longer needed for the lessor's rental inventory is subject to Retailers' Occupation Tax liability depends on whether the seller is strictly a lessor, or whether the seller is otherwise engaged in the business of selling like-kind property. See 86 Ill. Adm. Code 130.2013(e). Except in the case of motor vehicles, as explained at 86 Ill. Adm. Code 130.111, a person who is strictly a lessor and whose only sales are

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of items no longer needed for his rental inventory does not incur Retailers' Occupation Tax liability on those sales because they constitute non-taxable isolated or occasional sales. See 86 Ill. Adm. Code 130.110. Consequently, the purchaser of that tangible personal property does not incur a corresponding Use Tax liability on that purchase. See 86 Ill. Adm. Code 150.101(d).

Whether the lessor paid tax on the purchase of the leased item or bought it in a nontaxable manner (such as in an occasional sale) does not change the above analysis.

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