

ST-13-0064 – GIL 10/22/13 ROLLING STOCK EXEMPTION: This letter concerns the rolling stock exemption. See 86 Ill. Adm. Code Section 130.340. (This is a GIL.)

October 22, 2013

Dear Xxxxx:

This letter is in response to your letter dated March 21, 2013, 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 limited information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am requesting a letter ruling on behalf of my client, COMPANY, FEIN: XX-XXXXXXX, IL IBT: XXXX-XXXX.

COMPANY leases auxiliary power units (APUs) that are attached to trucks. The APUs conserve energy when the trucks are idling.

Attached is a copy of a true lease between COMPANY and PERSON, as well as other supporting documents. In IL, the lessor of tangible personal property has to pay IL use tax on the property that is being leased in IL. However, per **A Guide for Reporting Sales Using Form ST-556, Issue June 2010**, a lessor may claim the rolling stock exemption ‘if the lessee is recognized by the appropriate federal or state regulatory agency as an interstate carrier for hire and has received a Certificate of Authority to engage in interstate commerce’ (p. 36)

COMPANY has to issue an RUT-7 to the vendor to claim the rolling stock exemption. However, the Certificate of Authority number that PERSON (the lessee) provided (XXXXXX) belongs to COMPANY B, the company that PERSON is a contractor for.

Can COMPANY (the lessor) complete an RUT-7 for the purchase of the APU that will be leased to PERSON in IL if the Certificate of Authority number

provided in Step 4 of the RUT-7 belongs to COMPANY B and not PERSON (the lessee)?

This issue is not being audited by a representative of the Department of Revenue.

To the best of my knowledge, and COMPANY's knowledge, the Department of Revenue has not previously ruled on the same or a similar issue for COMPANY. Also COMPANY or its representatives have not previously submitted the same or similar issue to the Department and withdrew it before a letter ruling was issued.

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct, and complete.

DEPARTMENT'S RESPONSE:

Per our discussions and a change in your circumstances, the Department is issuing a General Information letter.

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.

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 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, see subsection (b) and subpart (2) of subsection (j) of 86 Ill. Adm. Code 130.340.

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 (g) of Section 130.340. When the rolling stock exemption may properly be claimed, the owner, lessor, or shipper should give the seller a certification stating that the tangible personal property being purchased by the owner, lessor, or shipper will be utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce. If the owner or shipper is a carrier, the owner or shipper must include its Interstate Commerce Commission Certificate of Authority number or

must certify that it is a type of interstate carrier for hire (such as an interstate carrier of agricultural commodities for hire) that is not required by law to have an Interstate Commerce Commission Certificate of Authority. If the purchaser is a lessor, the lessor must give the seller of the property a certification to that effect, similarly identifying the lessee interstate carrier for hire. 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.

When a lessee of tangible personal property has entered into an agreement with a carrier pursuant to the federal leasing regulations under 49 C.F.R. Part 376, and the lessee is operating under carrier's Certificate of Authority pursuant to the agreement, the purchaser/lessor of the tangible personal property may use the name of the carrier and the Interstate Commerce Commission Certificate of Authority number of the carrier on the RUT-7 submitted to the seller.

Please note that where the rolling stock exemption is claimed by a lessor with an interstate carrier for hire, the exemption lasts only so long as the rolling stock continues to be used by the interstate carrier for hire as rolling stock moving in interstate commerce. If the property reverts to the use of the lessor or the lessee no longer has an agreement with a carrier, the lessor incurs a Use Tax obligation based on the fair market value of the property on the date of the reversion to the lessor's use. However, in determining the fair market value at the time of reversion, the fair market value of such property shall not exceed the original purchase price of the property. See Section 130.340(e).

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
Associated Counsel

RSW:lkm