

ST 14-0006-PLR 10/20/14 Leasing

This letter discusses the alternative definition of “selling price” added to the Retailers’ Occupation Tax Act and Use Tax Act by Public Act 98-628 as it relates to sales of certain motor vehicles for lease. See 35 ILCS 120/1. (This is a PLR.)

October 20, 2014

Dear Xxxx:

This letter is in response to your letter dated May 15, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPAN A and COMPANY B for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY A, nor COMPANY B, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

Please view this letter as a request for a private letter ruling as to the application of newly enacted legislation amending Section 1 of the Retailers’ Occupation Tax Act and Section 2 of the Use Tax Act to COMPANY A and COMPANY B (together “COMPANY C”). COMPANY C’s main office is located at ADDRESS, CITY, Illinois XXXXX.

This ruling is requested for all taxable periods from and after its issuance until COMPANY C’s material facts that are the basis of this ruling change. Such a private letter ruling request is proper under 86 Ill. Admin. Code § 1200.110.

No authority exists that is contrary to the positions expressed in this request for a private letter ruling, nor are the issues in this request part of a current audit or litigation matter concerning COMPANY C or any related company. There are no regulations that are clearly dispositive of the issues in this request.

To the best of the knowledge of both COMPANY C and COMPANY C’s representative (power of attorney, attached), the Department of Revenue (“Department”) has not previously ruled on the same or a similar issue for COMPANY C or a predecessor. Neither COMPANY C nor its representative has previously submitted the same or a

similar issue to the Department, but withdrew it before a letter ruling was issued. And, there are no authorities that COMPANY C or its representative is aware of that are contrary to the ruling request made herein by COMPANY C.

Background

We represent COMPANY A and COMPANY B. COMPANY A is the servicing agent of COMPANY B that enters into leases on behalf [sic] COMPANY B with respect to motor vehicles located in the State of Illinois. In the ordinary course of its business, COMPANY C enters into Master Vehicle Lease Agreements (the "Agreement") with its lessee customers. (See a sample of the Agreement, attached as Exhibit A). The Agreement used by COMPANY C provides that the initial term of any lease entered into between COMPANY C and a lessee customer shall in no event be less than a period of twelve months and one day, and also grants to the lessee the option to continue the lease on a month-to-month basis thereafter. (See Section 2.A of a sample Agreement, attached as Exhibit A.) In addition, the Vehicle Lease Order Confirmation ("VLOC") entered into between COMPANY C and its lessee customers as part of the lease transaction provides that, following the initial term of the lease, the lease will continue on a month-to-month basis at the option of the lessee. (See sample VLOC, attached as Exhibit B.)

New Legislation

Public Act 98-0628, signed into law on April 21, 2014 and effective January 1, 2015,¹ amends Section 1 of the Illinois Retailers' Occupation Tax ("ROT") Act² and Section 2 of the Use Tax Act ("UT")³ to effectively change how motor vehicles sold "for the purpose of leasing the vehicle for a defined period that is longer than one year" are taxed under these Acts. Motor vehicles subject to this new provision are motor vehicles of the first division, and certain motor vehicles of the second division, of Section 1-146 of the Illinois Vehicle Code. Under this new taxing scheme, these motor vehicles sold for leasing will no longer be taxed on the purchase price of the vehicle to the lessor; rather, the lessor will collect tax on the lease payments received in the lease of the vehicle.

However, Public Act 98-0628 carves out of this new taxing scheme certain leases of motor vehicles:

This paragraph does not apply to leases of motor vehicles for which, at the time the lease is entered into, the term of the lease is not a defined period,

¹ Although language in the text of HB 2317 indicates that it applies to vehicles sold "on or after July 1, 2014," the effective date of the legislation (Public Act 098-0628) is January 1, 2015. In order to conform the language in the legislation to the effective date, HB 5684 has been introduced; it corrects the date in the text of Public Act 098-0628 to read January 1, 2015 instead of July 1, 2014. As of the date of this writing, HB 5684 has passed the House and is now in the Senate.

²35 ILCS 120/1.

³35 ILCS 105/2.

including leases with a defined initial period with the option to continue the lease on a month-to-month or other basis beyond the initial defined period.

Therefore, beginning January 1, 2015, a motor vehicle of the first division and certain second division motor vehicles purchased for the purpose of leasing the vehicle for a “defined period” that is longer than one year will be subject to taxation based on its lease stream. But, as noted above, purchases of vehicles for lease where, at the time the lease is entered into, the term of the lease is **not** for a defined period continues to be taxed as in the past based on the purchase price. Importantly, included within the scope of leases that are “not for a defined period” are leases that have a defined initial period, but which also provide the option to continue the lease on a month-to-month basis beyond the initial defined period.

Issue to be confirmed

Under Public Act 98-0628, vehicles purchased for lease by COMPANY C pursuant to COMPANY C’s Agreement and VLOC will continue to be subject to ROT and UT based on the purchase price of such vehicles, and COMPANY C’s leases of such vehicles to its lessees will not be subject to the ROT and UT on the lease payments COMPANY C receives?

Analysis & Conclusion

The amendments made to the ROT and UT by Public Act 98-0628 impose taxation on certain sales of certain motor vehicles purchased for lease based on their lease stream, but expressly exclude from this new taxing scheme purchases of motor vehicles purchased for lease where the lease is **not** for a defined period. The language of Public Act 98-0628 goes on to make it absolutely clear that a motor vehicle purchased for lease where the lease only has a defined initial period but then the lessee has the option to continue the lease on a month-to-month basis, are **not** leases for a defined period, and therefore leases of such motor vehicles will be excluded from this new taxing scheme.

Because COMPANY C’s Agreement and VLOC, both provide for an initial lease term of no less than twelve months and one day, while granting the lessee the option to continue the lease on a month-to-month basis thereafter, such leases entered into between COMPANY C and its lessee customers are exactly the type of leases expressly excluded from this new taxing scheme created by Public Act 98-0628. As a result, it is our understanding that COMPANY C will continue to be subject to ROT and UT on its purchase price of such motor vehicles and will not be subject to tax on the lease payments it receives. Consistent with that interpretation of Public Act 98-0628, we ask that you issue a ruling verifying this understanding.

If you have any questions, need any additional documents or facts, or contemplate issuing a private letter ruling different from that requested above, please call. COMPANY C reserves the right to withdraw this opinion letter request if a negative opinion is anticipated. Thank you again for your time and consideration of this matter.

DEPARTMENT'S RESPONSE:

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

Retailers' Occupation Tax is measured by gross receipts from the sale of tangible personal property to end-users. See 35 ILCS 120/2-10. "Gross receipts" is defined as "the total selling price or the amount of such sales." See 35 ILCS 120/1. Use Tax is imposed on "the selling price . . . of the tangible personal property." See 35 ILCS 105/3-10. Before January 1, 2015, "selling price" is defined as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever." See 35 ILCS 120/1 and 35 ILCS 105/2. Beginning on January 1, 2015, Public Act 98-628 adds language to the definition of "selling price" to provide that, only with respect to first division motor vehicles and certain second division motor vehicles that are sold to a leasing company (referred to in the statute as a "lessor") for the purpose of leasing the vehicle for a defined period that is longer than one year, "selling price" means "the consideration received by the lessor pursuant to the lease contract, including amounts due at lease signing and all monthly or other regular payments charged over the term of the lease." In addition, Public Act 98-628 states that, in these cases, "selling price" also includes "any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed, including, but not limited to, excess mileage charges and charges for excess wear and tear." See 35 ILCS 120/1 and 35 ILCS 105/2.

For the tax collected at the time the vehicle is sold and the lease is executed, Public Act 98-628 does not change who the Retailers' Occupation Tax or the Use Tax is imposed upon (Retailers' Occupation Tax on sellers and Use Tax on purchasers (lessors)) or that the tax is measured by the selling price. Public Act 98-628 does change how the selling price is calculated for sales to leasing companies of motor vehicles that meet the statutory criteria. For sales meeting the statutory criteria, selling price is measured by the amount to be paid under the terms of the lease contract, plus certain additional amounts collected by the lessor that are not calculated at the time the lease is executed, rather than by the consideration received for the sale.

We now consider the Master Vehicle Lease Agreement and the Vehicle Lease Order Confirmation ("VLOC") submitted on behalf of COMPANY C to determine whether a purchase by COMPANY C of a motor vehicle to be leased under these contracts is subject to the definition of "selling price" under Public Act 98-628.

Public Act 98-628 provides that its alternative definition of "selling price" for sales of the designated types of motor vehicles to leasing companies "does not apply to leases of motor vehicles for which, at the time the lease is entered into, the term of the lease is not a defined period, including leases with a defined initial period with the option to continue the lease on a month-to-month or other basis beyond the initial defined period." See 35 ILCS 120/1 and 35 ILCS 105/2.

COMPANY C's Master Vehicle Lease Agreement provides that "in no event shall the lease term be for a period of less than twelve months and one day." It also provides that "[t]he initial term of the lease shall be as stated in the VLOC and shall continue from month to month thereafter at the option of the lessee, until the lessee notifies the lessor in writing of the intent to terminate the lease." It is our opinion that under this language the vehicle is not being leased for a "defined period" under Public Act 98-628; and, therefore, the Retailers' Occupation and Use Tax on the sale of any vehicle that is subject to this lease agreement would not be measured using the definition of "selling price" added by Public Act 98-628. As a result, sales of motor vehicles to COMPANY C for purposes of leasing the motor vehicles in cases where the lease contains this language are subject to Retailers' Occupation Tax and Use Tax based on the selling price that is measured by the consideration received by the retailer from the purchaser for the sale, rather than the amount to be paid to the lessor under the terms of the lease contract.

The factual representations upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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
Chairman, Private Letter Ruling Committee

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