

ST 18-0012-GIL 04/05/2018 RENTAL PURCHASE AGREEMENT TAX

In general, items that are subject to the State 1% sales tax rate are not intended to be covered by the 6.25% Rental Purchase Agreement Occupation and Use Tax. See 35 ILCS 180/1 et seq. (This is a GIL.)

April 5, 2018

Dear Xxxxx:

This letter is in response to your letter dated September 12, 2017, in which you requested 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 information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On behalf of COMPANY we respectfully request written clarification that Public Act 100-0437 will not apply to COMPANY’s rentals of durable medical equipment within Illinois. We believe that the terms of COMPANY’s agreements with insurers and customers are not rental purchase agreements as defined by Public Act 100-0437 and consequently COMPANY is not required to remit rental purchase agreement occupation tax. We have described below COMPANY’s business operations.

Background Information

COMPANY is in the business of selling and renting durable medical equipment and related supplies to patients primarily for use in their homes. COMPANYs rental equipment Payment for products sold and rented is received from Medicare, Medicaid, private insurance companies and patients. COMPANY’s rental equipment is primarily medical appliances that are subject to the low tax rate under Illinois ROT.

Sales and rentals are generally made only pursuant to a prescription issued by the patient’s physician. Sales and rentals billed to Medicare and Medicaid require a physician’s prescription to qualify for reimbursement.

Upon delivery of rental equipment to a patient, the customer signs COMPANY’s Sales, Service and Rental Agreement form (copy with standard terms attached) which lists the equipment and supplies provided. COMPANY bills patients for equipment on a monthly

basis and customers may return the equipment at any time during the month. Patients are entitled to a pro-rata reduction of the monthly charge for equipment returned before the end of the monthly billing period. There is no explicit rental period in COMPANY's agreements and typically billing continues until the patient returns the equipment. The agreements signed by COMPANY's patients do not include a purchase option amount for the equipment the patient receives. COMPANY has some contractual agreements with insurers as well as Medicare that provide for cessation of rental payments after a specified period of time has elapsed. In circumstances where the rental term reaches the contractually specified period, the patient is entitled to retain use of the equipment without any additional monthly rental payments. For some types of equipment, the insurer or Medicare continues to pay COMPANY a reduced monthly fee to maintain and service the equipment.

Illinois Public Law 100-0437 defines Rental Purchase Agreement as "an agreement for the use of merchandise by a consumer for personal, family or household purposes for an initial period of 4 months or less that is automatically renewable with each payment after the initial period and that permits the consumer to become the owner of the merchandise."

COMPANY's agreements do not include a purchase option amount and patient's do not enter into the rental agreements with COMPANY with the intention of obtaining ownership of the property covered. COMPANY's services and equipment are traditionally utilized and rented to patients who have short term immediate need for medical equipment. Based on the absence of a purchase option amount, we believe that COMPANY's Agreements do not meet the Illinois definition to a Rental Purchase Agreement. Consequently, we believe COMPANY's rental agreements are not taxable under Public Act 100-0437 and COMPANY is not liable for Rental Purchase Agreement Occupation Tax or collection of Rental Purchase Agreement Use Tax from COMPANY patients.

We respectfully request that the Department confirm that the Rental Purchase Occupancy [sic] Tax and Rental Purchase Use Tax will not apply to COMPANY's rentals of durable medical equipment to patients based on the same agreement terms we have provided.

If you have any questions or need any additional information, please call me.

DEPARTMENT'S RESPONSE:

Persons who are engaged in the business of renting merchandise in Illinois under a rental purchase agreement are subject to the Rental Purchase Agreement Occupation and Use Tax. 35 ILCS 180/1 *et seq.* A "rental purchase agreement" is an agreement for the use of merchandise by a consumer for personal, family, or household purposes for an initial period of 4 months or less that is automatically renewable with each payment after the initial period and that permits the consumer to become the owner of the merchandise. For more information regarding rental purchase agreements, please see the Rental Purchase Agreement Act (815 ILCS 655/0.01 *et seq.*). The Rental Purchase Agreement Occupation and Use Tax is imposed at the rate of 6.25% of the gross receipts from the business of renting merchandise in Illinois under a rental purchase agreement. The Rental Purchase

Agreement Occupation and Use Tax does not apply to tangible personal property that is required to be titled and registered by a State agency.

Generally, a rental transaction is subject to the Rental Purchase Agreement Occupation and Use Tax if the transaction is governed by the Rental Purchase Agreement Act (815 ILCS 655/0.01 et seq.). The Department is of the opinion that, in general, items that are subject to the State 1% sales tax rate are not intended to be covered by the newly enacted 6.25% Rental Purchase Agreement Occupation and Use Tax. The House sponsor of the legislation referred in debate to “rent-to-own dealer[s]” when discussing taxpayers subject to the Act. See State of Illinois, 100th General Assembly, House, Transcription of Debate, May 30, 2017, page 17. COMPANY does not appear to fit that category. It is important to note, however, that each rental agreement must be evaluated in light of the specific rental contract and the other aspects of the transaction to determine whether the Rental Purchase Agreement Occupation and Use Tax applies.

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,

Samuel J. Moore
Associate Counsel

SJM:bkl