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December 21, 2020

NAME
ADDRESS

Dear Xxxx:

This letter is in response to your letter dated September 7, 2018, 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:

COMPANY is an equipment leasing company. We lease various assets, among others [sic] vehicles, trucks and rail cars. A lot of the contracts we do are true leases – the equipment is a property of COMPANY and the customer (lessee) uses the equipment for a set period of time and makes monthly payments. At the end of the lease term, the customer has the option to either return the equipment to COMPANY or purchase it for FMV.

On occasion, during the lease term the rail car or trucks are completely destroyed in an accident [sic] in these cases the customer is charged for the remaining rent, casualty value and other expenses and the title to the destroyed asset is transferred from COMPANY to the customer – Please read extract from the legal lease documents below.

We are requesting a State's opinion – based on the contractual language below, does the casualty loss event constitute a sale? Is this event subject to sale/use tax? Is COMPANY obligated to charge tax on the proceeds received from the customer?

10. LOSS AND DAMAGE. (a) Risk of Loss. During the entire Lease Term with respect to the Equipment covered by a Lease Schedule and until all of such

Equipment is returned to Lessor, or if applicable, purchased by Lessee, in accordance with the subject Lease, Lessee shall bear the risk of the occurrences of a Casualty to Equipment and LESSEE SHALL NOT BE RELEASED FROM ITS OBLIGATIONS UNDER THE SUBJECT LEASE IF A CASUALTY OCCURS.

(b) Casualty Notice. Lessee shall provide prompt written notice to Lessor of any Casualty to any Equipment where the repairs or replacement costs are likely to exceed \$100,000.00. Each such notice must be provided together with any damage reports provided to any governmental authority, the insurer or Supplier, and any documents pertaining to the repair of such Casualty, including copies of work orders, and all invoices for related charges.

(c) Casualty Cure. In the event a Casualty occurs with respect to any Equipment (1) if Lessor determines the Casualty does not constitute a Total Loss, then Lessee shall promptly repair the Casualty Equipment by utilizing Replacement Parts in accordance with Section 8(b) above or (2) if Lessor determines the Casualty constitutes a Total Loss, on the Loss Payment Date, Lessee shall pay to Lessor (A) the Basic Rent (or Renewal Rent, if the Total Loss occurs during a Renewal Term) due on the Loss Payment Date, plus (B) the Stipulated Loss Value of the Casualty Equipment as of the Loss Payment Date, plus

(C) all Other Payments then due. Upon full and indefeasible payment to Lessor of the sum described in clause (2) of the preceding sentence (x) Lessee's obligation to pay future Basic Rent or (Renewal Rent, as applicable) shall terminate solely with respect to the Casualty Equipment so paid for, but Lessee shall remain liable for, and pay, all Other Payments, if any, wherever arising connected with the Casualty Equipment and all Rent related to the remainder of the Equipment as and when due, and (y) Lessor, without further action, shall be deemed to have conveyed to Lessee all of Lessor's right, title and interest in the Casualty Equipment AS IS, WHERE IS, but subject to the requirements of any third party insurance carrier in order to settle an insurance claim.

(d) No Lessor Duty. Lessor shall be under no duty to Lessee to pursue any claim against any person in connection with a Total Loss or other Casualty to any Equipment.

(e) Insurance Proceeds Credit. If Lessor receives a payment under an insurance policy required under any Lease Document in connection with any Total Loss or other Casualty to Equipment, and such payment is both unconditional and indefeasible, then provided Lessee shall have complied with the applicable provisions of this Section 10, Lessor shall either (1) if received pursuant to a Total Loss, remit such proceeds to Lessee up to an amount equal to the amount paid by Lessee to Lessor as the Stipulated Loss Value of the Casualty Equipment, or credit such proceeds against any amounts owed by Lessee pursuant to Section 10(c)(2), or (2) if received with respect to repairs or replacements made pursuant to Section 10(c)(1), remit such proceeds to Lessee up to an amount equal to the out-of-pocket costs of repair or replacement actually incurred by Lessee, as established to Lessor's reasonable satisfaction.

We would appreciate your response in writing.

If you need to contact me please call NUMBER or email at the address below.

Please return your response to the address below:

ADDRESS

DEPARTMENT'S RESPONSE:

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 buyout provision at the close of the lease. If a buyout provision does exist, it must be a fair market value buyout 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. 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. See 86 Ill. Adm. Code 130.2010.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq. and except for items subject to the Rental Purchase Agreement Occupation and Use Tax Act found at 35 ILCS 180/1 et seq.

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. Except for the sale of certain motor vehicles, as defined and explained at 86 Ill. Adm. Code 130.111, a person who is strictly a lessor and whose only sales are of items no longer needed for his rental inventory does not incur Retailers' Occupation Tax liability on those sales. See 86 Ill. Adm. Code 130.2013(e). Such sales would be considered occasional sales. See 86 Ill. Adm. Code 130.110.

Lessors who are otherwise engaged in the business of selling like-kind property incur Retailers' Occupation Tax liability on all their sales, including sales of items coming off lease that are no longer needed for their rental inventories. Except as otherwise prohibited in the definition of "selling price" in Section 1 of the Retailers' Occupation Tax Act (i.e., in cases of certain motor vehicles where the lessor's taxable purchase price was equal to the consideration to be received by the lessor pursuant to the lease contract), a lessor who incurs a Retailers' Occupation Tax liability on the sale of an item can take a credit against that liability for any Use Tax and any local Retailers' Occupation Tax reimbursements that he or she paid to a supplier registered to collect Illinois tax when he or she purchased that particular item. However, this credit cannot exceed the amount of Retailers' Occupation Tax incurred by the lessor/retailer when he or she sells the item. Further, only the entity that originally paid the tax on the item can take the credit on the subsequent sale. See 86 Ill. Adm. Code 130.2013(h) and 35 ILCS 120/1. If a lessor filed a return and paid the tax directly to the Department, the lessor must file a claim to recover it.

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property occurs during the course of the lease agreement, then the lessee's payment of the stipulated loss value of the property on the date of loss, and the conveyance to lessee of all of lessor's right, title, and interest in the leased property, will not subject the transaction to Retailers' Occupation Tax. This would not be the case, however, if the lost property is a leased motor vehicle, as defined and explained at 86 Ill. Adm. Code 130.111, for which the lessee pays the stipulated loss value as of the date of the loss to the lessor and the lessor surrenders title thereto. In such case, a retail sale has occurred and the transaction is taxable. In this case, however, subject to the prohibition discussed in the preceding paragraph, the lessor may be entitled to a credit against the Retailers' Occupation Tax liability up to the amount of any Illinois Use Tax and any local Retailers' Occupation Tax reimbursements that he paid when he purchased the motor vehicle. See 86 Ill. Adm. Code 130.2013(h) and 35 ILCS 120/1

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