

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. See 86 Ill. Adm. Code 130.2010. (This is a GIL.)

August 24, 2021

Dear NAME:

This letter is in response to your letter dated June 9, 2021, 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:

My name is NAME. I am the controller for BUSINESS. I am writing to you for assistance in determining our company's sale/use tax liability. BUSINESS'S primary business is the rental of traffic control equipment primarily to our customers in the traffic control industry. An example of the equipment we rent is a changeable message sign trailer that would be seen on the side of the freeway in a road work zone. Until recently, we had one employee living and working in Illinois. We recently signed a lease for warehouse space and now have a physical location in Illinois. Our equipment is typically purchased and delivered to our STATE office and then shipped to various customers across the county [sic] including Illinois. The equipment is then used by our customers, possibly stored while not being used and then shipped to the next customer for use (possibly outside of Illinois). That being said, our equipment is being shipped from state to state frequently. I have spoken to the Illinois Department of Revenue and confirmed that our equipment rentals are not taxable. The question that recently came up was how to handle sales tax on our equipment when purchased. We do not pay sales tax on equipment when it is purchased as it is purchased for rental (type of

resale) to our customers. This treatment is appropriate according to the states where the equipment is delivered.

I am seeking assistance for the following:

1. What tax liability does the company incur when equipment is shipped into Illinois for rental to our customers and sales tax was not paid on the equipment when purchased and delivered in another state?
2. If equipment is directly delivered by the manufacturer to Illinois for rental, what is the sales/use tax liability?
3. If there is a sales/use tax liability when equipment is delivered directly to Illinois for rental, is there any tax refund when the equipment is moved out of Illinois?
4. Several of our customers are sales tax exempt and they are working on government projects with various departments of transportation. If equipment is sent directly or indirectly to Illinois, does this negate any tax liability on the equipment when it is rented by tax exempt customers for whom we have a valid sales tax exemption certificate?

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.

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than most 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 differently, 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. A true lease generally has no buy out 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.

In Illinois, persons who rent or lease the use of tangible personal property under true leases owe Use Tax on the cost price of the tangible personal property which is rented. See 86 Ill. Adm. Code 130.2010(b). The lessor cannot charge the lessee a "tax", but many times lessors will require, in the lease agreement, that the lessee "reimburse" the lessor for the taxes which the lessor incurs on the leased tangible personal property. There are no refund provisions to claim at the end of a lease. Except as to sales to persons who lease tangible personal property to exempt hospitals (Section 130.2011) and to governmental bodies (Section 130.2012), such lessors incur Use Tax even if the tangible personal property is leased to an exempt entity that has been issued an exemption identification number. 86 Ill. Adm. Code 130.2010(b).

Sales of tangible personal property to a lessor who leases that property to a governmental body are not subject to Retailers' Occupation Tax if (1) the tangible personal property is purchased for lease to a governmental body under a lease that has been executed or is in effect at the time of purchase; (2) the lease is for a period of one year or longer; and (3) the lease is to a governmental body that has an active tax exemption identification number issued by the Department. 86 Ill. Adm. Code 130.2012. If a seller of tangible personal property for use would not be taxable under the Retailers' Occupation Tax Act despite all elements of the sale occurring in Illinois, then the tax imposed by the Use Tax Act shall not apply to the use of such tangible personal property in this State. 86 Ill. Adm. Code 150.101(c).

Illinois allows a credit to taxpayers against their Illinois Use Tax liability when they have already paid sales tax on tangible personal property that was properly due to another State. 86 Ill. Adm. Code 150.310(a)(3). This credit is only allowed for tax and cannot apply to any interest or penalty paid to another State.

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,

Alexis K. Overstreet
Associate Counsel

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