

ST 24-0040-GIL 12/06/2024 LEASING

Gross receipts from the lease of property that is subject to Chicago's Personal Property Lease Transaction Tax are exempt from the State and Department-administered local retailers' occupation tax, as amended by Article 75 of Public Act 103-592. However, if the lease of this property would, but for this exemption, be subject to the tax on leases implemented by Article 75 of Public Act 103-592, then a sale to the lessor of this tangible personal property, for the purpose of leasing that property, shall be made State and local retailers' occupation tax-free as a sale for resale. See 35 ILCS 120(2-5)(49)(2) and 35 ILCS 120/2c. (This is a GIL.)

December 6, 2024

NAME
EMAIL

Dear NAME:

This letter is in response to your letter dated September 24, 2024, 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 <https://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:

Hello,

I represent a sales and use tax software company based in STATE. My team monitors state and local sales and use tax, as well as various other indirect taxes for all taxing jurisdictions across the COUNTRY. We strive to maintain the most accurate and up-to-date information in our tax database.

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We would like to inquire about the Illinois Department of Revenue's position on the upcoming tax on lease stream payments, effective January 1, 2025. In light of changes imposed by HB 4951, a new exemption is included for property subject to a tax on lease receipts imposed by a home rule unit of local government.

For transactions that meet this exemption, such as leases subject to the Chicago Personal Property Lease Tax, does the State of Illinois fully exempt the state's portion of tax? Additionally, when a transaction is subject to the Chicago Personal Property Lease Tax, will the existing Illinois upfront tax apply?

We appreciate your assistance in providing clarification on this matter.

DEPARTMENT'S RESPONSE:

Effective January 1, 2025, in accordance with the provisions of Article 75 of Public Act 103-592, persons engaged in the business of leasing tangible personal property at retail ("lessors") in Illinois are subject to State and local retailers' occupation tax on the gross receipts from leases of tangible personal property made in the course of business. See 35 ILCS 120/2 and see, e.g., 65 ILCS 5/8-11-1. A "lease" is defined as a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called, but does not include a lease entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee. On and after January 1, 2025, for purposes of State and local retailers' occupation taxes, the term "sale" includes a lease. See 35 ILCS 120/1. The tax applies to lease receipts received on or after January 1, 2025 for leases in effect, entered into, or renewed on or after that date. The lessor must remit for each tax return period the tax applicable to lease receipts received during that tax return period. See 35 ILCS 120/2.

The inclusion of leases in the tax imposed under the Retailers' Occupation Tax Act by Article 75 of Public Act 103-592 does not, however, extend to motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State. The taxation of these items continues as prior to January 1, 2025 (i.e., dealers owe retailers' occupation tax, lessors owe use tax, and lessees of these items are not subject to retailers' occupation or use tax). On and after January 1, 2025, the tax on leases does, however, extend to trailers that are not semitrailers as defined in Section 1-187 of the Illinois Vehicle Code.

On and after January 1, 2025, a sale to a lessor of tangible personal property who is subject to the tax on leases implemented by Article 75 of Public Act 103-592, for the purpose

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of leasing that property, shall be made tax-free on the ground of being a sale for resale if the purchaser has an active registration number or resale number from the Department and furnishes that number to the seller in connection with certifying to the seller that the sale to such purchaser is nontaxable because of being a sale for resale. See 35 ILCS 120/2c.

Gross receipts from the lease of property that is subject to a tax on lease receipts imposed by a home rule unit of local government are exempt from the State and Department-administered local retailers' occupation tax if the ordinance imposing the home rule tax was adopted prior to January 1, 2023. See 35 ILCS 120/2-5(49)(2) as added by Article 75 of Public Act 103-592. Specifically, gross receipts from the lease of property that is subject to Chicago's Personal Property Lease Transaction Tax are exempt from the State and Department-administered local retailers' occupation tax. However, if the lease of this property would, but for this exemption, be subject to the tax on leases implemented by Article 75 of Public Act 103-592, then a sale to the lessor of this tangible personal property, for the purpose of leasing that property, shall be made State and local retailers' occupation tax-free as a sale for resale.

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Samuel J. Moore
Associate Counsel

SLM:slc