

Effective January 1, 2025, 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 as amended by Article 75 of Public Act 103-592.

December 19, 2024

NAME
COMPANY1
ADDRESS

Dear NAME:

This letter is in response to your letter dated December 16, 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:

REDACTED. I am looking for some clarification around the sourcing rules and destination-sourcing for my company which is based in CITY1, IL. and what constitutes a periodic recurring lease payment.

I believe after reading numerous informational sheets that my company's transactions would not qualify as a periodic recurring lease payment whether it was picked up at my CITY1 location or if we delivered it to another location. All my rentals of PRODUCTS are rented for a finite period, are described on my contract as a day, week or month, and the contract shows the "Agreed Return date ". However, if a customer asks to keep the equipment additional day or switch to the week rate, we would adjust the contract to show the revised return date and charges. The customer

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substantially controls the equipment's usage. Hence, the rental payments would not be periodic, and origin sales tax should apply... correct????

I have provided some other routine rental situations that we encounter daily and would appreciate your comments:

COMPANY2 needs a PRODUCT1 delivered to CITY2 Illinois for a week. At the end of the week, he asks us to pick it up in CITY3 Illinois. Not recurring/periodic rental payments, origin rate?

COMPANY2 picks up a PRODUCT1 and a PRODUCT2 at my location, returns the PRODUCT2 after 2 days and keeps the PRODUCT1 for a month and then asks us to pick it up in CITY3 Illinois. Origin rate since pick-up is CITY1?

COMPANY2 rents a PRODUCT3 for the winter and asks us to deliver it to CITY4 Ill. We offer a one-time 16 week rental price at a discount with a return date listed on the contract. Not recurring/periodic rental payments, origin rate?

COMPANY2 wants to rent a PRODUCT3 with the option to buy it after 90 days. We offer a program where you can rent an item for up to 90 days and receive a portion of the rental payment back to reduce the agreed upon price. The rental contract is for 1 month with an agreed upon date and can be extended for a 2nd and 3rd month. Not recurring/periodic rental payments, origin rate?

I have listed just a few scenarios that we would encounter daily. My understanding of the rules would be that the rentals described above would fall under the Retailers' Occupation Tax Act for sales at retail and the payment would be sourced at the retailer's location since the rental payments are not periodic and recurring, irrespective of delivery.

I would also like clarification on the rental of trailers for the equipment. We have a small fleet of NUMBER trailers that we rent out to customers and use to make deliveries. Currently we are paying RUT25 taxes at the DMV when we apply for title and plates. Titled vehicles/trailers are generally excluded from the new IL leasing law. What about these titled trailers???

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. 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.

A person who sells tangible personal property to a purchaser who may use or consume such property within the meaning of the Retailers’ Occupation Tax Act, but who also may resell such property, must determine, at the time when he sells the property to such purchaser, whether the purchaser is buying the property “for use or consumption” within the meaning of the Act or whether the purchaser is buying the property “for resale”. 86 Ill. Adm. Code 130.1401. Beginning 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 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. See 86 Ill. Adm. Code 130.1405 for Certificate of Resale requirements. Purchases for use or consumption may not be made tax-free for resale. If a retailer, including lessors beginning January 1, 2025, purchases an item that the retailer intends to use or consume as well as lease, that item may not be purchased tax-free for resale. If a lessor wants to avail themselves of the opportunity to make purchases tax-free for resale, such lessor will need to keep separate inventories based on items purchased tax-free for lease and items for use by the lessor.

On and after January 1, 2025, 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 regardless of whether the seller is strictly a lessor or is also engaged in the business of selling like-kind property other than leasing it. This is true because, on and after January 1, 2025, except for 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, a person who is engaged in the business of leasing or renting tangible personal property is a retailer of these items under the Act and, therefore, cannot make an isolated or occasional sale of like-kind tangible personal property that is no longer needed for the rental inventory. [35 ILCS 120/2]. 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 paid to a supplier registered to collect Illinois tax when he purchased that particular item. However, this credit cannot exceed the amount of State and local retailers' occupation tax incurred by the lessor/retailer when he sells the item. 86 Ill. Adm. Code 130.2013(h)(2). The credit is available to all lessors who are required to pay Retailers' Occupation Tax when selling an item after having used that item for rental purposes. 86 Ill. Adm. Code 130.2013(h)(4).

The lease of tangible personal property that is subject to the tax on leases under Article 75 of Public Act 103-592 is sourced as follows:

- (i) For a lease that requires recurring periodic payments and for which the property is delivered to the lessee by the lessor, each periodic payment is sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.
- (ii) For all other leases, including a lease that does not require recurring periodic payments and any lease for which the lessee takes possession of the property at the lessor's place of business, the payment is sourced as otherwise provided under this Act for sales at retail other than leases.

See 35 ILCS 120/2-12(5.5) as amended by Article 75 of Public Act 103-592.

A lease requires recurring periodic payments if the lease agreement for the property provides for a fixed or indeterminate term and requires consideration to be broken into

multiple payments due over the course of multiple return periods. If a lease agreement is fixed in duration and requires a single payment to be made in consideration for the lease of a specified item or items, the lease does not require recurring periodic payments.

If a lease does not require recurring periodic payments, pursuant to 35 ILCS 120/2-12(5.5), the payment is sourced as otherwise provided under the Retailers' Occupation Tax Act for sales at retail. Because the tax is imposed on the retail business of selling and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the retailers' occupation tax is owed. Rather, it is the jurisdiction where the seller is engaged in the business of selling that can impose the tax. *Automatic Voting Machs. v. Daley*, 409 Ill. 438, 447 (1951) ("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as such.") (citing *Mahon v. Nudelman*, 377 Ill. 331 (1941) and *Standard Oil Co. v. Dep't of Finance*, 383 Ill. 136 (1943)); see also *Young v. Hulman*, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax...imposes liability upon the occupation of selling at retail and not on the sale itself"). See, for example, 86 Ill. Adm. Code 270.115(b)(1). The Illinois Department of Revenue has created administrative rules that govern the sourcing of local retailers' occupation taxes. See, for example, 86 Ill. Adm. Code 270.115. The rules provide that:

The occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price". *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Thus, establishing where "the taxable business of selling is being carried on" requires a fact-specific inquiry into the composite of activities that comprise the retailer's business. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 32 (citing *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943)). 86 Ill. Adm. Code 270.115(b)(2).

Some retailers are engaged in retail operations with selling activities in multiple jurisdictions within the State, or in jurisdictions located in more than one state. The selling activities that comprise these businesses "are as varied as the methods which men select to carry on retail businesses." *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Consequently, "it is...not possible to prescribe by definition which of the many activities must take place in [a jurisdiction] to constitute it an occupation conducted in [that jurisdiction] It is necessary to determine each case according to the facts which reveal the method by which the business was conducted." *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943); see also *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 36. See, for example, 86 Ill. Adm. Code 270.115(b)(3).

A seller incurs Retailers' Occupation Tax in a given taxing jurisdiction if its predominant and most important selling activities take place in that jurisdiction. Isolated or

limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 322- 23 (1943); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraphs 30 through 35. See, for example, 86 Ill. Adm. Code 270.115(b)(5). The Department’s regulations enumerate several “primary selling activities” and “secondary selling activities” to aid in this inquiry, which are listed at 86 Ill. Adm. Code 270.115(c)(1) and (4). “Primary selling activities” include:

- A) Location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale;
- B) Location where the seller takes action that binds it to the sale, which may be acceptance of purchase orders, submission of offers subject to unilateral acceptance by the buyer, or other actions that bind the seller to that sale;
- C) The location where payment is tendered and received, or from which invoices are issued with respect to each sale;
- D) Location of inventory if tangible personal property that is sold is in the retailer’s inventory at the time of its sale or delivery; and
- E) The location of the retailer’s headquarters, which is the principal place from which the business of selling tangible personal property is directed or managed. In general, this is the place at which the offices of the principal executives are located. When executive authority is located in multiple jurisdictions, the place of daily operational decision making is the headquarters.

See, for example, 86 Ill. Adm. Code 270.115(c)(1). If three primary selling activities occur in the same location, that is the jurisdiction where you are engaged in the business of selling. If the primary selling activities occur in multiple jurisdictions, but no individual jurisdiction has more than two primary selling activities, you must consider the listed secondary selling activities to determine the jurisdiction where you are engaged in the business of selling. “Secondary selling activities” include:

- A) Location where marketing and solicitation occur;
- B) Location where the seller engages in activities necessary to procure goods for sale;

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- C) Location of the retailer's officers, executives or employees with authority to set prices or determine other terms of sale if determinations are made in a location different than that identified in subsection (c)(1)(A);
- D) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed or fulfilled in a location or locations different from where they are received;
- E) Location where title passes; and
- F) Location where the retailer displays goods to prospective customers, such as a showroom.

See 86 Ill. Adm. Code 270.115(c)(4).

Every retailer in this State must determine the taxing jurisdictions where it is engaged in the business of selling with respect to each of its sales by applying the standards set forth in Section 270.115(c), except when a retailer is engaged in particular selling activities identified by a statute that specifies the taxing jurisdiction where retailers engaged in those activities shall remit retailers' occupation tax. See 86 Ill. Adm. Code 270.115(c). If you are engaged in any special selling activity where your remittance of retailers' occupation tax would be directed by statute rather than these rules, please refer to the applicable statute.

Except as provided in subsection (d), a retailer that is not engaged in the business of selling in a jurisdiction under subsection (c)(2) is engaged in the business of selling in the jurisdiction where its inventory is located under subsection (c)(1)(D), or where its headquarters is located under subsection (c)(1)(E), whichever jurisdiction is the location where more selling activities occur, considering both primary and secondary selling activities. A retailer that is not engaged in the business of selling in a jurisdiction under subsection (c)(2) or (c)(5) is presumed to be engaged in the business of selling at the location of its headquarters absent clear and convincing evidence to the contrary. See 86 Ill. Adm. Code 270.115(c)(5) and (6).

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 800-732-8866.

Very truly yours,

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Alexis K. Overstreet
Deputy General Counsel

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