

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 taxes, 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 27, 2024

COMPANY
EMAIL

Dear Taxpayer:

This letter is in response to your letter dated October 9, 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:

We are writing to you to better understand the application of use tax on our fleet of assets. For background, our company ("Taxpayer") is a shared micro-mobility provider which provides e-bikes and e-scooters for rent. Customers are able to pay up front or after the end of their rental period for a predetermined per-minute fee.

The Taxpayer operates within the City of Chicago. The Taxpayer charges, collects, and remits the Chicago Lease Transaction Tax on all of its lease transactions. For calendar year 2024, the state of Illinois does not impose Retailers' Occupation Tax ("ROT") on lease or rental transactions, and

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therefore the Lease Transaction Tax is the only transaction tax applicable to the Taxpayer.

Because the Taxpayer has been collecting transaction taxes in the form of the Lease Transaction Tax, it is our belief that our e-bikes and e-scooters are exempt from any additional transaction taxes. It is our belief that imposition of additional taxes, such as use tax, would constitute double taxation.

Question: Can the Illinois Department of Revenue kindly confirm our understanding above, that is, Illinois sales and use taxes would not apply to our assets?

Thank you in advance for your time and advice in the matter.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

For Illinois Retailers' Occupation Tax and Use 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. 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. Through

December 31, 2024, the State of Illinois imposes no tax on lease receipts. Consequently, lessees incur no State 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 merchandise rented for personal, family, or household purposes that is subject to tax under the Rental Purchase Agreement Occupation and Use Tax Act found at 35 ICLS 180/1 et seq.

Changes Effective January 1, 2025

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-

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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.

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 taxes 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 taxes. 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 800-732-8866.

Very truly yours,

A handwritten signature in cursive script that reads "Samuel J. Moore".

Samuel J. Moore
Associate Counsel

SJM:sce