

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. (This is a PLR.)

February 28, 2025

NAME
COMPANY1
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your letter dated January 8, 2025, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to, COMPANY1 for the issue or issues presented in this ruling and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY1 nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

I am writing on behalf of COMPANY1 which operates a business that provides trash disposal services involving roll-off dumpsters. We are seeking a private letter ruling from the Illinois Department of Revenue (the “Department”) to clarify whether our services are subject to Illinois sales tax under 35 ILCS 120 (the “Act”). Specifically, we are requesting guidance on whether our charges

for trash disposal involving the use of roll-off dumpsters that typically remain at a customer's home or business for more than one day constitute a "Lease" as defined under the Act should be taxed. We do not believe we are conducting a rental service, but rather providing a waste disposal service with the dumpster as an accessory to the service.

1. Statement of Facts and Relevant Information:

Identification of Interested Parties:

- **Taxpayer:** COMPANY1Y, a company providing trash disposal services using roll-off dumpsters to gather the materials for residential and contractor customers in Illinois.
- **Interested parties:** The business serves residential customers and contractors in need of waste removal/disposal services. We provide a roll-off dumpster as part of our service, which is removed and replaced as necessary to facilitate the disposal of waste.

Business Reasons for the Transaction:

At COMPANY1, we provide comprehensive trash removal services, which include the following core elements:

1. **Waste Disposal Service:** We provide a waste removal service for residential and contractor customers, which includes the delivery of a collection container, removal, and disposal of trash, construction debris, or other waste materials.
2. **Roll-Off Dumpsters as Part of the Service:** The roll-off dumpster, or container, is a removable part of the truck used to hold and transport (like a dump truck, but with a removable bed). The container is provided to customers to enable them to aggregate and load their waste materials at their own pace which may be several days. The dumpster is not "rented" to the customer but rather is a part of the waste removal service we provide. We retain ownership of the container, and it is removed by us once the customer has completed filling it. The customer signs a service agreement, rather than a rental agreement, and is not allowed to move, adjust, or transport the container.

Unlike a typical rental service, where a customer would have independent use of a piece of tangible personal property, including the transportation of such

property for a set period of time without ancillary service, our service includes the use of the dumpster solely for the purpose of aggregation for waste removal. The customer may not use the dumpster outside of the waste disposal process, and the cost for the use of a dumpster is included as part of the overall trash removal service. A dumpster is merely a tool used to collect trash over a period of time that will eventually be emptied by our company.

Detailed Description of the Transaction:

- **Pricing:** Our pricing structure is as follows:
 - **Current Base fee:** \$\$\$ for the full waste removal service, which includes the use of the roll-off dumpster, delivery, pickup, and travel for the disposal of the waste (for residential customers up to # days and up to # days for contractors).
 - If the service period exceeds the allocated time (# days for residential, # days for contractors), an **additional charge** is applied in order to:
 - Dissuade prolonged use of the container
 - To recover opportunity costs of not being able to service another waste removal job
 - Additional charges may include fuel surcharges, labor surcharges, or tonnage fees associated with the disposal of the waste.
- **Taxability Concerns:** We seek guidance on whether any part of or the entire charge for the service, which includes the use of the roll-off dumpster, should be subject to sales tax. Our belief, in line with the STATE Department of Revenue, is that we are providing a waste removal service, not a rental service. While the dumpster is part of the service, the container is considered a necessary part of the process of waste removal, not a rental item.

Example of How Dumpsters Differ from Other Rental Tools:

To further illustrate how the dumpster service differs from typical rental transactions, consider the following comparison:

- **Example 1 – Roll-Off Dumpster Service:** The roll-off dumpster we provide is used exclusively for the purpose of aggregation and waste disposal. The customer is not renting the dumpster for independent use. Instead, they are paying for a full-service trash removal service, which includes the use of the dumpster as an essential tool for waste collection. Once the dumpster is filled, we promptly remove it,

ensuring proper disposal of the waste, at which point the container is no longer in the customer's possession. The transaction is a **service-based contract** where the equipment is a tool used by the service provider to accomplish a specific task (e.g., waste removal, landscaping, construction). The customer pays for the outcome or result of the service, not for the independent use of the equipment.

- **Example 2 – Rental of Tools or Equipment:** A typical rental transaction, such as renting a power tool or construction equipment, involves the customer taking possession of the tool for an agreed-upon period of time. The customer has control over the item during the rental period and is responsible for using it, maintaining it, and returning it by the agreed-upon time. They can move the tool/equipment, perform functions with it, and use it independently during the agreed upon period. The tool or equipment is not necessarily tied to any service beyond the temporary use of the item, and the rental charge is for the independent use of that item.

In contrast, our roll-off dumpster is not rented for the customer's independent use; it is provided as a part of the overall waste removal service. The customer does not retain use of the container beyond the duration of the waste removal process, and the charge is primarily for the service of disposing of waste, not for renting the container.

2. Relevant Contracts and Agreements:

- **Customer Agreements:** We have standard service agreements (as opposed to rental agreements) with customers that clearly outline our services, fees, and the use of the roll-off dumpsters as part of the waste disposal service.
- **Franchise Agreement:** As a franchisee of the COMPANY2 system, we follow operational guidelines and pricing structures set by the franchisor for waste removal services, which includes the use of the dumpsters as part of the overall service.

3. Tax Period as Issue and Pending Audit or Litigation:

- **Tax Period at Issue:** We are inquiring about the taxability of our services for the period beginning January 1, 2025, when the Act took effect.
- **Audit or Litigation:** No audit or litigation is pending with the Department regarding this issue.

4. Prior Rulings:

To the best of our knowledge, the Department has not previously issued a private letter ruling on this issue for COMPANY1, or any predecessor entity. We have not submitted a similar request to the Department, nor have we withdrawn any ruling request on this issue.

5. Supporting Authorities:

We understand that Illinois law treats the rental of tangible personal property as taxable under the “lease” definition. However, we believe that our service is not a lease or rental but rather a comprehensive trash removal service that includes the use of the dumpster as a necessary tool for disposal (similar to residential trash bins). We are requesting clarification on whether our charges for the entire waste removal service are subject to sales tax, and whether the provision of the dumpster as part of this service should be treated as taxable.

- **Supporting Authorities:**
 - Illinois Compiled Statutes, **35 ILCS 120/1** (Sales Tax Law).
 - Illinois Department of Revenue Publication FY-2025-15 (Sales Tax Application to Leases and Rentals of Tangible Personal Property).

6. Contrary Authorities:

In stark contrast to STATE Department of Revenue customer service representatives, upon inquiring with customer service representatives from the Illinois Department of Revenue, they have stated that the “rental portion” of our roll-off service is taxable. As there appears to be significant gray area about roll-off dumpster services, we would appreciate the Department’s guidance on how Illinois law applies to these transactions.

7. Trade Secret Information:

Pricing and price structure is included in this request and therefore, we request this information to be deleted from the publicly disseminated version of the private letter ruling.

8. Signature of the Taxpayer or Representative:

- **Taxpayer Signature:**
NAME
Owner

COMPANY1

We respectfully request that the Department provide us with a private letter ruling confirming that our charges for trash removal services, which include the use of roll-off dumpsters, are not subject to Illinois sales tax, as the dumpster is an accessory to the waste disposal service, not a rental item.

Thank you for your attention to this matter. We look forward to your guidance.

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 at retail to purchasers for use or consumption. See 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 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

The provision of a service in Illinois that is not accompanied by the transfer of tangible personal property is generally not subject to Retailers' Occupation Tax or Service Occupation Tax liability. The sale of service that is accompanied by a transfer of tangible personal property would be subject to liability under the Service Occupation Tax Act.

Effective January 1, 2025, in accordance with the provisions of Article 75 of Public Act 103-592, persons engaged in the business of making sales of service are subject to State and local service occupation tax on all tangible personal property transferred by lease as an incident of a sale of service. See 35 ILCS 115/3. 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 service occupation taxes, the term "transfer" includes a lease. See 35 ILCS 115/2. The tax applies to tangible personal property transferred by lease by persons engaged in the business of making sales of service in which leases are in effect, entered into, or renewed on or after January 1, 2025. The serviceman who is a lessor must remit for each tax return period only the tax applicable to that part of the selling price actually received during such tax return period. See 35 ILCS 115/3.

Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. Tangible personal property that is transferred to the

service customer may result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon the serviceman's activities. The serviceman's liability may be calculated in one of four ways:

- (1) Service Occupation Tax on the separately stated selling price of tangible personal property transferred incident to service;
- (2) Service Occupation Tax on 50% of the servicemen's entire bill;
- (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or
- (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base (the second method described above). Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred as an incident of the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. (referred to as "unregistered de minimis servicemen"). Such de

minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

The cost ratio is a measure of the amount of tangible personal property transferred with a service. It is calculated by comparing the serviceman's product cost to his total income from services. The cost of materials that are not transferred to customers incident to a service, such as those sold at retail, removed from inventory for use, or incorporated into repairs of real estate, must be excluded when determining the cost ratio. See 86 Ill. Adm. Code 140.105(c). To calculate the cost price of the tangible personal property transferred by lease, a serviceman must first determine the useful life of the tangible personal property. The useful life is the useful life or recovery period allowed under federal law for like kind of property. See 86 Ill. Adm. Code 150.110. The serviceman must then divide the price initially paid to its supplier for the item by its useful life. Finally, convert the cost price into whatever time period is used for the lease (e.g. years or months). The result is the cost price for each rental payment. The serviceman must multiply the cost price for each rental payment by the duration of the lease during the year to determine the annual product cost used to determine cost ratio. This method to determine cost price for each rental payment must also be used in calculating Service Occupation Tax liability using the first three methods described above. This cost price is used as long as the serviceman transfers such tangible personal property by lease as an incident of a sale of service and is not limited to the useful life of the item.

The transactions you describe in your letter constitute waste removal services in which a dumpster is leased as an incident of the sale of waste removal service. This is so because, without the waste removal service, the dumpster is of little to no value to the customer. As such, the provisions of the Service Occupation Tax Act would apply to these transactions.

It does not appear that your company is registered under Section 2a of the Retailers' Occupation Tax Act. Further, engaging in the transactions described in your letter would not require your company to register under Section 2a. Therefore, the third method of calculating tax liability under the Service Occupation Tax Act would not apply.

You must calculate your cost ratio to determine whether you are de minimis. If your annual costs for the dumpsters make up 35% or more of the total annual gross receipts from your waste removal service transactions, you would be subject to Service Occupation Tax using one of the first two methods of calculating the tax listed above. If the price to lease the dumpster is not separately stated, you must assess the Service Occupation Tax on 50%

of the entire bill to your service customers. The tax base may not be less than your cost price of the tangible personal property transferred. If your annual costs for the dumpsters make up less than 35% of the total annual gross receipts from your waste removal service transactions, you would be a de minimis unregistered serviceman and would owe Use Tax to your suppliers of the dumpsters. If your suppliers do not collect Use Tax from you on these transactions, you must self-assess and remit Use Tax to the Department. There is no need to register with the Department for sales tax if you are a de minimis unregistered serviceman.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

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
Private Letter Ruling Chairman

SJM:AKO:sce