

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

January 17, 2025

NAME
EMAIL

Dear NAME:

This letter is in response to your letter dated January 13, 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.

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:

Dear Sir or madam,

I am inquiring about a question that has arisen under the new requirement to charge sales tax on the lease of tangible personal property and am looking for guidance.

The business is a dumpster rental business. Initially, I was thinking sales tax would apply on the lease of the dumpster and the business could break out the delivery and disposal fees on the invoice and those charges would not be subject to tax. But on further research, I am now thinking that perhaps the dumpster rental business is a service business and the dumpster rental is de minimis. In this case, the company delivers the dumpster and picks it up when the customer is done and removes the waste. I have not been able to find any specific exemption of taxation for waste removal services in Illinois. I understand that if the delivery and removal was not included at all and was

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the customer's responsibility, then the dumpster rental would be taxable. But in the case I have described, the cost of the dumpster (when spread out among many customers) would be minimal (less than 35%) of the total price charged to the customer for the rental and disposal. Am I thinking correctly that the dumpster rental is a sale of service and thus sales tax is not required to be charged? Instead the business continues to pay tax on the purchase of the dumpster as it always has. Thank you for your assistance.

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 relatively insignificant or incidental 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

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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 incident to 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. Such de minimis servicemen handle their tax liability by paying Use Tax

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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.

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,

Alexis K. Overstreet
Deputy General Counsel

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