

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 GIL).

March 24, 2025

NAME
TITLE
COMPANY
EMAIL

Dear NAME:

This letter is in response to your email dated January 23, 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 email you have stated and made inquiry as follows:

We are a park district with a few facilities. One of which being the CITY Golf Course. We rent out golf carts and hand cars to patrons. Would these fall under the new lease or rented tangible personal property? How can I figure out the rate?

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.

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.

True Object

When tangible personal property is transferred as part of the rental of space or as part of providing an amusement, tax is due. The tax owed and the method to calculate the tax depend on two factors:

- (i) whether the tangible personal property is the true object of the transaction;
and
- (ii) how the tangible personal property is invoiced in the transaction.

The following paragraphs address these issues.

Regarding the rental of banquet and conference rooms, the Department has previously determined that if the true object of the transaction is the rental of the room and if food or beverages are provided incidentally to the rental of the room, no tax is incurred on the charges for the rental of the room. If no separate charge is made under the contract for the incidental amount of food or beverages provided, the renter is considered the user of the food or beverages and incurs use tax on its cost price of the food or beverages transferred incidentally to the rental of the room. If a separate charge is made for any food and beverages transferred incidentally to the rental of the room, the renter incurs retailers’ occupation tax on the selling price of the food or beverages. See 86 Ill. Adm. Code 130.2145(e). However, if the true object of the transaction is the sale of food or beverages, any room rental charges are part of the seller’s costs of doing business and are includable

in the seller's taxable gross receipts even if the charges for the room rental are separately stated on the agreement or bill between the seller and its customers. In the context of a room rental, the Department deems the providing of any food other than snacks to be the true object of the transaction and not the rental of the room. If alcoholic beverages are either provided or sold by the rentor to the persons attending the event for which the room is rented, the true object of the transaction will always be deemed the sale of food or beverages and not the rental of the room. The rental of the room in these circumstances is considered an inseparable link in the sale of the food and beverages to the customer and is not merely incidental to the seller's business of selling food or beverages. Therefore, in these circumstances, charges for room rental are includable in the seller's taxable gross receipts. See 86 Ill. Adm. Code 130.2145(e).

This same test applies to rentals of tangible personal property incident to a rental of space or providing an amusement, e.g. batting cages, mini golf courses, bowling alleys, skating rinks, and golf courses. If the true object of the transaction is the rental of space or providing an amusement, no tax is incurred on the charges for the space or the amusement. If no separate charge is made under the agreement for the incidental amount of tangible personal property provided, the rentor is considered the user of the tangible personal property and incurs use tax on its cost price of the tangible personal property transferred incidentally to the purchaser of space or an amusement and used in the course of using that space or partaking in that amusement. If a separate charge is made for any tangible personal property transferred by rental or lease incidentally to the rental of space or providing an amusement, the rentor incurs retailers' occupation tax on the rental or lease price of the tangible personal property.

Inseparable Link

However, if the true object of the transaction is the lease or rental of tangible personal property, any space rental or amusement charges, if inseparably linked to the lease or rental of the tangible personal property, are part of the lessor's costs of doing business and are includable in the lessor's taxable gross receipts. This is true even if the charges for the space rental or amusement are separately stated on the agreement or bill between the lessor and its customers.

When an "inseparable link" exists between the lease of tangible personal property and related service charges, including delivery charges, the related service charges are part of the gross receipts subject to the Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.415(b)(1)(B)(i). An inseparable link exists when (a) the service charges are not separately identified to the lessee on the contract or invoice or (b) the service charges are separately identified to the lessee on the contract or invoice, but the lessor does not offer the lessee the option to lease the property without the payment of service charges added to the lease or rental price of an item (e.g., the lessor does not offer the lessee the option to

lease the tangible personal property separately from the related service, or the lessor does not offer, or the lessee does not qualify for, a free service option). 86 Ill. Adm. Code 130.415(b)(1)(B)(ii). In contrast, if the lessee can rent or lease the tangible personal property without payment of service charges to the lessor, then an inseparable link does not exist, and the service charges should not be included in the lease or rental price of the tangible personal property. 86 Ill. Adm. Code 130.415(b)(1)(B)(ii)-(iii).

The following example illustrates whether a service charge constitutes an inseparable link to rental or lease charges. A business offers guided kayak tours that include the rental of a kayak for the one-hour tour duration. Renters are encouraged to participate in the tour but are allowed to venture off on their own. The business requires tour participants to use the provided rented kayaks. The business does not offer rentals of kayaks independent of purchasing the tour. The kayak rental is the true object of the transaction since the tour could not be done without the kayak, but the kayak rental would still have value without the tour. The charge for the tour is inseparably linked to the rental charges for the kayak, regardless of if they are separately stated, as you cannot rent the kayak without the tour charge. As such, the entirety of the proceeds of the transaction is includable in the business's gross receipts and subject to tax. However, if the business were to offer independent kayak rentals in addition to kayak tours, the charge for the tour would not be inseparably linked to the rental charges for the kayak. In this instance, if the business separately states the charge for kayak rental from the charge for the tour on the business's invoice, the charges for the tour would not be includable in the business's gross receipts for retailers' occupation tax purposes and would be a nontaxable service charge.

Sales for Resale

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 could keep separate inventories based on items purchased tax-free for lease, the receipts for the lease of which will be subject to retailers' occupation tax, and items purchased tax-paid for use by the lessor. Tax-paid items include tangible personal property used by transferring it incident to the provision of an entertainment or amusement environment in which the object of the transaction is the entertainment or amusement environment and no separate charge is made for the tangible personal property.

Sourcing

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.

Sourcing – Retail Leases

For sales at retail, 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. 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;
- 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).

Tax Rate

Lessors are subject to the Retailers' Occupation Tax rate for taxable leases. The Retailers' Occupation Tax rate and Use Tax rate imposed by the State of Illinois are 6.25% and 1%, depending on the type of item being sold. See 86 Ill. Adm. Code 130.310 and 130.311. Unlike the state tax rates noted above, local tax rates vary depending on the tax rate imposed by the local government in a particular jurisdiction. For local tax rates, see the Department's Tax Rate Database and the Tax Rate Finder on the Department's website at tax.illinois.gov. Once on the website, at the bottom of the page is a list with the heading "Quick Links". At the bottom of that list is a link entitled "Tax Rate Database". Click on that link which will take you to a screen entitled "Tax Rate Database". In the middle of the screen click on the link entitled "MyTax Illinois Tax Rate Finder". Click on that link which will take

COMPANY

Page 9

March 24, 2025

you to a search screen. This screen permits you to search by address or by local government to find the tax rates applicable in that taxing jurisdiction.

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,

Samuel J. Moore
Associate Counsel

SJM:sce