

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.

April 15, 2025

NAME
COMPANY
EMAIL

Dear NAME:

This letter is in response to your email dated April 3, 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:

I’m reaching out to request clarification regarding my business’s sales tax obligations as a provider of wedding and event décor services in Illinois. I understand there have been updates under P.A. 103-592 effective January 1, 2025, and I’ve received differing guidance from various departments within the Illinois Department of Revenue as well as from multiple CPAs. Most have advised that we do not need to charge sales tax, but a few have suggested we might—though without certainty. We’re hoping to receive clear guidance directly from your office.

My business specializes in custom event décor, primarily for weddings and private events. This includes creating designs that incorporate items such as sofas, arches, draping, lighting, silk flowers, and candles—which are owned by us. Occasionally, we rent linens and chairs from other vendors, who have informed us they will begin charging sales tax. We do not transfer ownership

of any items to the client; all décor is installed for the event and removed afterward.

Clients are charged a flat rate for the full décor package (for example, \$30 for a wedding centerpiece), which includes both the use of tangible items (such as vases) and the creative design and preparation work. Labor and delivery are always listed separately on our invoices and reflect day-of costs such as setup and teardown. The décor package itself includes our design time and prep work done in advance of the event.

I would appreciate clarification on the following:

1. Under the current law, are we required to collect and remit sales tax on these décor packages, even when a significant portion of the value comes from design and the temporary use of décor elements?
2. If it is determined that we do need to collect and remit sales tax, and we internally determine that, for example, 60% of the package value is attributable to the rental of tangible items and 40% is labor/design, can we calculate tax only on the taxable portion? If we decide to charge tax on the full amount (for simplicity on the client-facing side), but only remit what is owed based on the actual taxable portion, is that acceptable from a compliance standpoint? Additionally, does the inclusion of one-time-use items like candles—which are consumed during the event and already purchased by us with sales tax paid to our suppliers—affect how that portion should be treated?

We are committed to ensuring full compliance and would greatly appreciate your interpretation or direction on how the new law applies to our type of business.

Thank you for your time and 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. Retailers' Occupation Tax and Use Tax do not apply to sales of service. The Service Occupation Tax Act (SOT) imposes a tax upon persons

engaged in this State in the business of making sales of service, based on tangible personal property transferred incident to sales of service.

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 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. 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 retailers' occupation taxes, the term "sale" includes a lease. See 35 ILCS 120/1. For purposes of State and local service occupation taxes, the term "transfer" includes a lease. See 35 ILCS 115/2. 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. For sales of service, 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 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 and 35 ILCS 115/3. For retail leases and tangible personal property transferred by lease by persons engaged in the business of making sales of service, tax is due at the lessor's State and local retailers' occupation tax or service occupation tax rate based on where the lease is sourced. See 35 ILCS 120/2-12(5.5) and 35 ILCS 115/12 incorporating 35 ILCS 120/2-12(5.5).

True Object Test

If it is determined that the transaction includes a taxable transfer of tangible personal property, it must be determined whether the transaction is a retail lease transaction or a transfer by lease of tangible personal property incident to a sale of service. To determine whether a transaction is a retail lease transaction or a transfer by lease of tangible personal property incident to a sale of service, the lessor must determine the true object or substance of the transaction. "If the article sold has no value to the purchaser except as a result of services rendered by the vendor and the transfer of the article to the purchaser is an actual

and necessary part of the service rendered, then the vendor is engaged in the business of rendering service and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail.” *Spagat v. Mahin*, 50 Ill. 2d 183 (1971); *Velten & Pulver, Inc. v. Department of Revenue*, 29 Ill. 2d 524, 529; *Dow Chemical Co. v. Department of Revenue*, 26 Ill. 2d 283, 285; *Kellogg Switchboard & Supply Corp. v. Department of Revenue*, 14 Ill. 2d 434, 437. If the tangible personal property rented would have value even without the services a company provides, the substance of the transaction is the tangible personal property.

Sale of Service

If it is determined that the true object of the transaction is the service and that the tangible personal property is transferred by lease incident to a sale of service, tax on the transfer of the tangible personal property by lease is calculated under the Service Occupation Tax Act. 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 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.

Charging tax on the full amount for simplicity but only remitting what is owed based on the actual taxable portion is unacceptable. Under no circumstances is a taxpayer allowed to overcollect tax. The intentional overcollection of tax violates the Illinois tax laws.

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 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.

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) (incorporated by 35 ILCS 115/12) 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 – Sales of Service

For sales of service, if a transfer of tangible personal property by lease incident to a sale of service does not require recurring periodic payments or is not delivered, pursuant to 35 ILCS 120/2-12(5.5), the payment is sourced as otherwise provided under the Service Occupation Tax Act. If the Illinois Service Occupation Tax on a transaction is being remitted to the Department by the serviceman, the serviceman shall also pay any applicable local service occupation tax to the Department on the same transaction if such serviceman's place of business is located in a taxing jurisdiction which has adopted a local service occupation tax. If a purchase order is accepted outside this State but the tangible personal property which is transferred by lease incident to the sale of service is in the inventory of a serviceman located within a jurisdiction with a locally imposed service occupation tax at the time of its transfer by lease (or is subsequently produced in such a jurisdiction) then delivered in Illinois to the service customer, the place where the property is located at the time of the transfer by lease (or subsequent production in the jurisdiction) will determine where the serviceman is engaged in business for local service occupation tax purposes with respect to such sale of service. See 86 Ill. Adm. Code 280.115.

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.

COMPANY
Page 7
April 15, 2025

Very truly yours,

Alexis K. Overstreet
Deputy General Counsel

AKO:sce