

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).

April 21, 2025

NAME, TITLE
COMPANY
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your letter dated April 4, 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:

Effective 1/1/2025 leases and rented tangible personal property were incorporated into sales and subject to destination-based ROT sourcing. COMPANY is requesting clarification via a **Letter Ruling** on the taxation of specific items as well as confirmation on the specific use-tax rate for items in which we are not charged tax. (35 ILCS 120)

COMPANY rents tangible personal property. In some rental arrangements, COMPANY procures the services of the Lessor to erect and later dismantle the piece of equipment it will be renting. These items have been laid out below with explanation.

Tower Crane: The tower crane is rented for an indeterminate term whereby we exercise the possession or control of that specific piece of machinery. We understand the bare rental of the tower crane to be a taxable event subject to destination-based ROT sourcing effective 1/1/2025.

Assist Cranes: Prior to the tower crane becoming within our control for operation, the lessor and a third party erect the crane and subsequently dismantle the crane at completion of the rental term. To perform the erection and dismantle, the lessor provides an assist crane(s) and the labor to operate that crane to perform the service. The crane provider handles the set-up, transportation and operation of these assist cranes. Tangible personal property is not transferred. Neither the equipment nor the labor to operate the assist crane(s) are supplied or maintained by COMPANY.

The assist crane is not within COMPANY's possession or control, the lessor's operator and oiler, as applicable, determine when the crane will work and what picks it will complete. The lessor also determines the type of crane(s) needed to erect the bare rental tower crane.

Please confirm the operated crane used to assemble/disassemble the tower crane is not subject to destination-based ROT sourcing by itemized task noted below

- the assist crane
- the labor to operate the assist crane
- the transportation to/from the site where such equipment is used to perform the service of erecting and/or dismantling the crane

Maintenance Agreement: The service provider renting the crane extends the option for the lessee to procure a maintenance agreement on the tangible property rented. The maintenance agreement is separately sold and stated on the invoice. The agreement is billed monthly for the same duration as the tangible property is rented. Please confirm the maintenance agreement is not subject to destination-based ROT sourcing.

Labor: On occasion, a bare rental will encounter a need to maintenance and/or labor to provide the raising of the crane. The crane jump (rising) is a process by which sections are added to the mast, allowing it to extend as the building rises. It is a service procured and provided by the lessor.

- Maintenance: A technician is provided by the crane company and the labor for the services performed on the piece of equipment are invoiced to COMPANY at agreed upon hourly rates. No tangible

personal property is transferred. Please confirm the labor on the bare rental continues to be a non-taxable event and is not subject to destination-based ROT sourcing.

- Raising the crane: A technician(s) is provided by the crane company and labor is performed on the piece of equipment to add sections to the mast. The service is completed at agreed upon hourly rates. No tangible personal property is transferred. Please confirm the labor continues to be a non-taxable event and is not subject to destination-based ROT sourcing.

Freight: The crane provider delivers the tower crane to/from the construction side. The freight is separately stated on the invoice. Please confirm the transportation charge of the bare rental continues to be a non-taxable event and is not subject to destination-based ROT sourcing.

Use Tax on Leased or Rented: COMPANY is registered within Illinois for Use Taxes (XXXX-XXXX). For invoices related to a lease or rental in which the retailer or lessor has not assessed tax on the invoice, please confirm the tax shall be self-assessed by COMPANY at the IL rate of 6.25% and remitted to the State of Illinois, thereby fulfilling COMPANY's obligation on the transaction.

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.

Maintenance Agreements

The taxation of maintenance agreements is discussed in subsection (b)(3) of Section 140.301 of the Department's administrative rules under the Service Occupation Tax Act. See 86 Ill. Adm. Code Sec. 140.301(b)(3). The taxability of agreements for the repair or maintenance of tangible personal property depends upon whether charges for the

agreements are included in the selling price of the tangible personal property. If the charges for the agreements are included in the selling price of the tangible personal property, those charges are part of the gross receipts of the retail transaction and are subject to tax. In those instances, no tax is incurred on the maintenance services or parts when the repair or servicing is performed. A manufacturer's warranty that is provided without additional cost to a purchaser of a new item is an example of an agreement that is included in the selling price of the tangible personal property.

If agreements for the repair or maintenance of tangible personal property are sold separately from tangible personal property, sales of those agreements are not taxable transactions. However, when maintenance or repair services or parts are provided under those agreements, the service or repair companies will be acting as service providers under provisions of the Service Occupation Tax Act that provide that when service providers enter into agreements to provide maintenance services for particular pieces of equipment for stated periods of time at predetermined fees, the service providers incur Use Tax based on their cost price of tangible personal property transferred to customers incident to the completion of the maintenance service. See 86 Ill. Adm. Code 140.301(b)(3). The sale of an optional maintenance agreement or extended warranty is an example of an agreement that is not generally a taxable transaction.

Leases

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. For retail leases, tax is due at the lessor's State and local retailers' occupation tax rate based on where the lease is sourced. See 35 ILCS 120/2-12(5.5).

When the provision of tangible personal property includes an operator for the tangible personal property for a fixed or indeterminate period, the arrangement may constitute a lease taxable under the Retailers' Occupation Tax Act. If the operator is

necessary for the equipment to perform as designed and is responsible for more than maintaining, inspecting, or setting up the tangible personal property, the arrangement is not a lease. When a purchaser enters into such an agreement to use tangible personal property for a predetermined period, but an owner operator retains possession and control of the tangible personal property, such agreement does not constitute a lease. The customer may gain access to the benefit of the tangible personal property, but an owner operator remains in possession and control of the property throughout its use under the agreement. In this situation, the customer does not have the unfettered right to possess or control the tangible personal property, and the transaction does not include any taxable transfer of tangible personal property. However, if the provision of tangible personal property includes an agent of the lessor to simply maintain, inspect, set up, or disassemble the tangible personal property, such arrangement is subject to the provisions of Article 75 of Public Act 103-592.

True Object Test

If it is determined that a 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 make this determination, 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.

Inseparable Link

If the true object of the transaction is the lease or rental of tangible personal property, any accompanying service charges, such as delivery and setup, 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 services 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.

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.

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.

Home Rule Lease Tax Exemption

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.

Local Tax

Locally imposed retailers' occupation taxes (e.g. the Home Rule Municipal Retailers' Occupation Tax (HRMROT)) authorize retailers subject to these taxes to reimburse themselves for their liability by separately stating these taxes to their customers. See, for example, 86 Ill. Adm. Code 270.101. The statutory language authorizing the HRMROT states, in part, the following:

Persons subject to any tax imposed under the authority granted in this Section may reimburse themselves for their seller's tax liability hereunder by separately stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with State tax which sellers are required to collect under the Use Tax Act...

65 ILCS 5/8-11-1. Sellers (including lessors) are responsible for State and local retailers' occupation taxes on lease receipts subject to tax under the provisions of Article 75 of Public Act 103-592 and may collect from purchasers (including lessees) the 6.25% Use Tax liability and all local tax reimbursement liabilities.

If tax is not collected by the retailer, purchasers (including lessees) should self-assess and remit Use Tax to the Department at the rate of 6.25%. In this situation, the purchaser would not be obligated to pay State and local retailers' occupation taxes as the incidence of those taxes is on the retailer, not the user.

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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