

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 28, 2025

NAME
COMPANY
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your email dated February 18, 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:

Our firm provides tax representation to a private religious school for whom purchases are sales tax exempt under 35 ILCS 105/3-5(4). We have an [sic] question about the taxability of educational equipment that the school purchases tax-free and subsequently leases to its students.

It is mandatory that students at the school rent laptops directly from the school each year. The laptops are purchased tax-free and the costs to rent them are built into the students’ annual tuition costs.

We would like to know if the leases are exempt from sales and use tax under 86 Ill. Admin. Code § 130.2005(b)(2)(B) [sic], which provides that sales of yearbooks to

students by for-profit educational institutions are exempt because the yearbooks are “noncompetitive items.”

Here, essentially, students are required to rent inventory owned by the school and they cannot acquire the property from anywhere else in the marketplace. The leases are mandatory and a condition of the students’ attendance.

As such, are these leases exempt from tax as “noncompetitive items”?

The relevant legislation is attached. Please let me know if you require any other information.

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. This includes the extension of all exemptions from retailers’ occupation tax and use tax to leases. See 35 ILCS 120/2-5. 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 purposes of the issues discussed in this letter please note that, on and after January 1, 2025, “sales” include leases and rentals.

Sales by Educational Institutions

Your letter references sales of yearbooks by schools. The administrative rule related to that provision is included in Special Rules Concerning Sales by Educational Institutions and reads as follows:

Schoolbooks and School Supplies

- A) A school incurs retailers' occupation tax liability when selling schoolbooks and school supplies to its students or others for use. Sales of digital textbooks that are downloaded electronically do not incur tax as they are considered intangibles. See 86 Ill. Adm. Code 130.2105.
- B) Schools are not taxable on their sales of school yearbooks because these are noncompetitive items.

86 Ill. Adm. Code 130.2005(c)(2).

This provision is in the context of the larger discussion related to the taxability of sales by exclusively charitable, religious, or educational organizations discussed below and codifies Section 2 of the Retailers' Occupation Tax Act definition of "sale at retail" as it relates to this issue, which provides that "[t]he selling of school books and school supplies by schools at retail to students is not "primarily for the purposes of" the school which does such selling. 35 ILCS 120/2.

Organizations that qualify as exclusively charitable, religious, or educational organizations can apply to the Illinois Department of Revenue to obtain a tax exemption identification number ("e-number"). Please see 86 Ill. Adm. Code 130.2007 for the requirements for making application for an e-number. E-numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes.

Organizations and institutions that are both operated and organized exclusively for charitable, religious, or educational purposes are as a general matter subject to Retailers' Occupation Tax upon their own sales of tangible personal property. There are, however, limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers Occupation Tax liability. Exclusively charitable, religious, and educational organizations that hold exemption numbers may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities without incurring Retailers' Occupation Tax liability. 86 Ill. Adm. Code 130.2005(a)(2)-(4).

Section 2 of the Retailers' Occupation Tax Act defines "sale at retail" as it relates to this issue as follows:

A person whose activities are organized and conducted primarily as a not-for-profit service enterprise, and who engages in selling tangible personal property at retail (whether to the public or merely to members and their guests) is engaged in the business of selling tangible personal property at retail with respect to such transactions, excepting only a person organized and operated exclusively for charitable, religious, or educational purposes either (1), to the extent of sales by such person to its members, students, patients or inmates of tangible personal property to be used primarily for the purposes of such person, or (2), to the extent of sales by such person of tangible personal property which is not sold or offered for sale by persons organized for profit. 35 ILCS 120/2.

Noncompetitive Sales

With respect to sales that are exempt as “noncompetitive sales” the Department’s administrative rules provide the following:

- B) The Attorney General has laid down the following tests for determining that selling is noncompetitive:
 - i) The transactions are conducted by members of the charitable entity and not by any franchisee or licensee.
 - ii) All of the proceeds must go to the charity.
 - iii) The transaction must not be a continuing one but rather should be held either annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative decision, to be made by the Department.
 - iv) The reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a charitable contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the charity.
- C) In addition, the Attorney General has stated that there are these further considerations for the purpose of furnishing some guides to the resolution of questions raised by each individual situation:
 - i) The nature of the particular item sold. All other things being equal, the decision as to candy might well be different from the decision as to refrigerators.

- ii) The character of the particular sale, and the real practical effect upon punitive competition.

86 Ill. Adm. Code 130.2005(a)(3)(B) and (C).

In this category, the Attorney General's opinion stresses that the sale must be infrequent, and that the dominant motive of the purchase must be the making of a donation to the charitable or religious organization that conducts the sale, rather than the acquisition of property. Even if the sale to the public occurs only once a year, the charitable or religious organization that conducts the sale would incur retailers' occupation tax liability if it sells hats, greeting cards, or other items for which the dominant motive of the purchase is the acquisition of the property rather than the exchanging of the property merely as a token for the making of a donation.

Sales to Members

The sales to members exemption found at 86 Ill. Adm. Code 130.2005(a)(2) is limited to sales by an exclusively charitable, religious, or educational organization that are made primarily for the purposes of the selling organization to its members, or students in the case of a school. Please note the population to which sales are made must be limited to persons specifically associated with that exempt organization and must be for the primary purpose of the selling organization. If such sales are made to the public at large, the selling activity is subject to the Retailers' Occupation Tax. See Section 130.2005(a)(2) through (a)(4). Whether the sales are for the primary purpose of the selling organization depends on the nature of the tangible personal property sold and how that tangible personal property is used. If an organization sells literature or other items of tangible personal property that would place them in competition with religious bookstores, the sales generally would not be primarily for the purpose of the selling organization. However, sales of choir robes or like tangible personal property to members would generally be primarily for the purpose of the selling organization. It is very important that these organizations not be cavalier in determining the nature of their sales.

The Illinois Supreme Court provided guidance in this area in the case of *Follett's Book & Supply Store v. Isaacs*, 27 Ill.2d 600, 1963. In *Follett's* the court analyzed a situation where schools were selling books only to their students. The schools were not charging sales tax pursuant to a Department of Revenue regulation that exempted sales of schoolbooks by schools to its students. Retail bookstores that competed with the school bookstores brought the lawsuit and claimed that the schools were operated for educational purposes and that their book sales were not essential to such purposes or operated in furtherance of such purposes. The Illinois Supreme Court concluded that the sales were subject to sales tax and the court voided the Department regulation that had exempted such sales from sales tax liability. If organizations engage in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), they must also register with the Department as retailers, file returns and collect and remit tax. For these types of ongoing sales, the organizations would provide their suppliers with Certificates of

COMPANY

Page 6

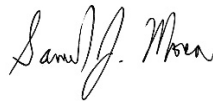
April 28, 2025

Resale for the items they purchase to resell and remit Retailers' Occupation Tax on their gross receipts from sales. See 86 Ill. Adm. Code 130.1405, which describes the requirements for validly executed Certificates of Resale.

The reason, in part, for both the noncompetitive sales and sales to members rules is to ensure that exempt entities do not have a competitive advantage when selling items that are also sold by Illinois retailers. The Illinois General Assembly did not intend to give exempt entities a competitive advantage over Illinois retailers.

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, appearing to read "Samuel J. Moore".

Samuel J. Moore
Associate Counsel

SJM:sce