

ST 25-0029-GIL 05/08/2025 LEASING

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).

May 8, 2025

NAME
DEPARTMENT
COMPANY
EMAIL

Dear EMAIL:

This letter is in response to your email dated March 26, 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:

We are looking to clarify sale tax implications on the following items:

1. Leasing of machinery – Can you confirm how to treat sales tax applications on a leased machinery which the lease price is significantly less than the fair market value of the machinery? The lease is generally a long-term lease of approximately 36-60 months.

IE: We have a client that leases equipment to customers for \$X every month for a 36-60 month term however the value of the equipment being leased is

valued at approximately \$X+. If the customer were to terminate the contract, the customer would be required to return the equipment in full.

2. Bundled treatment – Can you confirm if the sale of storage of human specimen which includes machinery to be able to store the specimen and a platform to be able to track the specimen storage within the equipment would have sales tax implications?

IE: Would the machinery lease or sale or platform use cause the bundled price to be subject to sales tax despite the true object of the transaction for the customer is to store the human specimen for secure access.

DEPARTMENT'S RESPONSE:

Gross Receipts

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. 86 Ill. Adm. Code 130.101. On and after January 1, 2025, this includes leasing tangible personal property at retail to lessees for use or consumption. The Retailers' Occupation Tax is imposed on the gross receipts from sales or leases of tangible personal property. See 35 ILCS 120/2-10. Gross receipts from sales or leases of tangible personal property at retail means the total selling price of the tangible personal property. Selling price includes all consideration for a sale or lease valued in money whether received in money or otherwise, including cash, credits, property...and services... See 35 ILCS 120/1. It is unclear how a virtually negligible rental charge is a sustainable business model, but to the extent such an amount consists of all the consideration for the lease, that is the taxable selling price under the Retailers' Occupation Tax.

Service Occupation Tax

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).

Storage

The tax on leases and rentals of tangible personal property does not extend to real property. For instance, room rentals, locker rentals, and storage facility rentals would not be taxed under Article 75 of Public Act 103-592. To the extent that property is installed as fixtures permanently attached to the realty on which they are located, it is not considered tangible personal property and the lease or rental of that property would not be subject to the tax on leases and rentals of tangible personal property.

With Operator

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

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 renter 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

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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.

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