

Effective January 1, 2025, in accordance with the provisions of Article 75 of Public Act 103-592, 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. (This is a PLR).

December 31, 2025

NAME
COMPANY1
ADDRESS

Dear NAME:

This letter is in response to your letter dated November 7, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY2, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY2, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

I am writing on behalf of my client, COMPANY2 (“Company”).¹ Company is registered for Retail Occupation Tax in Illinois. Company is a broker of waste removal services, portable sanitation services (portable toilets & handwashing stations), temporary fencing and portable storage containers. Company does not own or lease dumpsters, portable toilets,

¹ COMPANY2 operates as “COMPANY3”, the customer-facing brand in the waste management industry.

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handwashing stations, fencing or portable storage containers. Company utilizes third-party contractors to perform these services. Company does not have any physical locations, employees or property in Illinois.

1. Statement of Facts

Company contracts with local businesses (hereinafter “third-party contractors/haulers”) who operate in Illinois and either own or lease dumpsters, portable toilets, handwashing stations, fencing and portable storage containers or have access to them. Company began charging tax and remitting on its ROT return in January 2025 for the rental of temporary fencing and portable storage bins.² The taxability of temporary fencing and portable storage bins are not addressed in this request as Company is properly taxing the rental of the tangible personal property effective with the January 2025 law change.

This Private Letter Ruling is specifically requesting guidance for the proper tax treatment of waste removal services involving roll-off dumpsters and portable sanitation services.

Basics of a Waste Removal Transaction

A typical transaction begins when a customer contacts Company by phone or website with details about the waste they need removed. From this information, Company determines the appropriate size and type of container necessary for the removal and separately contracts with a local hauler who delivers the dumpster and when filled, ultimately performs the removal service by picking up the dumpster at the customer location and taking the material to a disposal station.

It is important to note that Company’s use of local, independent contractors/haulers does not alter the nature of the transactions. Nor does the delegation of work to the third-party contractor affect the non-taxability status of the waste removal service. Accordingly, our references below to Company are interchangeable with contractors, and vice versa.

Once an appropriate contractor and container are designated, the third-party contractor delivers the container to the customer’s location. The

² Effective January 1, 2025, persons engaged in the business of leasing tangible personal property at retail (“lessors”) in Illinois are subject to State & Local retailer’s occupation tax on the gross receipts from leases of tangible personal property made in the course of business. 35 ILCS 120/2 as amended by Article 75 of Public Act 103-592.

customer subsequently deposits their waste in the container. The contractor then picks up the container at a pre-agreed upon time and date. Filled containers are taken to processing locations at the sole discretion of the contractors.

Company invoices customers after the service is complete and does not charge or collect ROT or SOT from the customers. As shown in attachment B, Company invoices its customers on a lumpsum basis (i.e., the provision of a dumpster is never a separate charge from the removal service and the delivery of a dumpster is never a separate charge from the removal service).

Marketing vs. Substance

We recognize Company advertises its service as a “dumpster rental,” however, the true substance of the transaction is one for a service – i.e., waste removal. From a marketing perspective, “dumpster rental” has become the industry standard terminology for waste removal services, notwithstanding this true nature of the transactions (i.e., waste removal services).

To illustrate the service nature of the transactions:

- Company does not provide dumpsters independent of their removal service;
- Company does not provide their removal service independent of their provision of dumpsters;
- The provision of a dumpster is never a separate charge from the removal service;
- The delivery of a dumpster is never a separate charge from the removal service;
- Company selects the size and type of the dumpster provided based on its review of the customer’s service request;
- The use of the dumpsters is controlled by Company, *not* its customers;
 - A dumpster may only be used for the removal of waste;
 - The customers are not permitted to move the dumpsters once placed by Company;
 - Company restricts the types of materials placed in the dumpster; and

- Company restricts the amount of material placed in the dumpster;
- Company controls how and where the waste is disposed – including paying any associated fees;
- Pricing is based on the waste to be removed, not the age or condition of the dumpster;
- Title, possession, and direction or control over the dumpsters remain with Company;
- The purchase and maintenance of dumpsters are only a small fraction of the cost associated with providing the waste removal services; and
- Sales and use taxes should be paid on the dumpsters by the third-party contractor at the dumpsters' initial purchase.

The COMPANY3 website is an informational website **only**, not for transactional purposes, and uses common language used in the industry. Individuals do not rent a dumpster because they want a dumpster, they rent a dumpster to facilitate the removal of waste/debris. While the COMPANY3 website may leverage common language for customer engagement purposes, the actual COMPANY3 commercial site includes the commercial language noted below at the very bottom of every page of the site that more clearly defines the commercial activity – i.e., “[REDACTED]”

The Company also provides portable sanitation services.³ This includes portable toilets and handwashing stations that are serviced either weekly or biweekly. The servicing includes pumping, stocking, refilling and sanitizing. During each service, the units are pumped out, biocides are added to eliminate bacteria, toilet paper and hand sanitizer are restocked, and the unit is completely sterilized to maintain Occupational Safety and Health Administration (OSHA) standards of cleanliness. The customer is not permitted to move or sanitize the units. After the sewage and wastewater (“gray water”) is collected, the third-party contractor transports the sewage and wastewater to a waste disposal site. Although the units are essential, the primary activity of the business is the removal and disposal of the sewage and

³ Reference “COMPANY3” – For Companies; Jobsite Services

wastewater just like the dumpsters are to the waste disposal service. This does not constitute the rental/lease of tangible personal property. Company is providing a sanitation/waste removal service. As shown in attachments C & D, Company invoices its customers on a lumpsum basis based on the number of times the toilets/handwashing stations are pumped to remove the sewage and gray water and to service the units as described above. There is no separate charge for the toilet or handwashing station.

2. Relevant Service Agreement and Invoices

- Third-party contractor Service Agreement – “Attachment A”
- Sales Invoices “Attachments B, C &D”.

3. Tax Period at Issue and Pending audit or Litigation

The tax period in question is January 1, 2025 through current. Company has no audit or litigation pending with the Department regarding this issue. Neither Company or any of its representatives have previously submitted the same or a similar issue to the Department. Company is not currently under audit with the Department nor is there pending litigation with the Department.

4. Prior Rulings

The Department has issued PLR 25-0001 which discusses waste disposal services and roll-off dumpsters used as part of the service. However, there is a significant difference between the facts in PLR 25-0001 and the facts presented herein. In the instant matter, Company uses a third-party contractor to provide the dumpster to the customer and to perform the waste removal services. Hence, Company does not purchase the roll-off dumpsters or portable sanitation products. Further, PLR 25-0001 does not address portable toilets and handwashing stations. To the best of the knowledge of both the Company and Tax Representative, the Department has not previously ruled on the same or similar issue for the Company or a predecessor other than PLR 25-0001.

5. Statement of Authorities

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. “Lease” 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.⁴ On and after January 1, 2025, for purposes of state and local retailers' occupation taxes, the term "sale" includes a lease.

True Object Test

The true object test is used to determine the real substance of a transaction: is the customer primarily purchasing tangible personal property (including by lease), or are they primarily purchasing a service, with any transfer of property being merely incidental?

The Illinois Supreme Court and Department of Revenue have articulated the test as follows:

- If the article (tangible personal property) has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article is an actual and necessary part of the service, then the vendor is engaged in rendering a service, not selling at retail.
- If the article is the substance of the transaction and the service is merely incidental to the transfer of the article, then the vendor is engaged in the business of selling at retail.⁵

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.**⁶

⁴ 35 ILCS 120/2

⁵ *Spagat v. Mahin*, 50 Ill. 2d 183 (1971); *Velten & Pulver, Inc. v. Department of Revenue*, 29 Ill. 2d 524; *Dow Chemical Co. v. Department of Revenue*, 26 Ill. 2d 283; *Kellogg Switchboard & Supply Corp. v. Department of Revenue*, 14 Ill. 2d 434.

⁶ ST 25-0024-GIL

In the instant matter, the customer does not acquire title, possession or a leasehold interest in the dumpsters or portable toilets/handwashing stations. The use of the dumpsters and portable toilets/handwashing stations are controlled by Company, *not* its customers, and the customers are not permitted to move the dumpsters or the portable toilets/handwashing stations once placed by Company. Moreover, Company does not independently lease or rent to customers the aforementioned tangible personal property which is only used as an accessory to the provision of waste removal and sanitation services.

Because Company is not selling, renting, or leasing tangible personal property to the customer, but merely arranges for a nontaxable waste removal service to be performed by a third-party contractor, Company does not owe sales or use tax (including SOT) for the service transaction. Though Company is not requesting tax guidance relative to the third-party contractor, it would seem the contractor, as the service provider and owner of the dumpsters and portable toilets/handwashing stations is, in like manner, not responsible for remitting SOT or ROT on the service provided, unless it separately rents or leases the dumpsters to the customer, which is not the case here.

6. Contrary Authorities

Although Private Letter ST 25-0001-PLR has similar facts to Company's, there is a significant difference. ST 25-0001-PLR did not address the "True Object Test" (discussed above) relative to the SOT obligations of a waste removal service provider such as Company. Further, the third-party contractor purchases the roll-off dumpsters or portable sanitation products which are then used to provide waste removal services to the Company's customers. The third-party contractors are likely paying sales/use tax on the dumpsters and toilets/washing stations at the time of purchase.

This Private Letter Ruling is specifically requesting guidance for the proper tax treatment of Company's waste removal services involving roll-off dumpsters and portable sanitation services relative to the "true object" test referenced discussed above.

We respectfully request that the Department provide us with a private letter ruling confirming that:

1. Company's charges to customers for waste removal and portable sanitation services, which include the use of roll-off dumpsters and portable toilets/handwashing stations, are not subject to IL sales

tax (i.e., Company is not required to collect sales tax from the customer on any portion of the transaction).

2. Company has no SOT liability because (i) the true object of the transaction is a “waste removal service” (ii) there is no separate charge for the use, rental or lease of these items and, (iii) the customer does not acquire any rights in the dumpsters/portable toilets/handwashing stations beyond what is necessary for the service.
3. Should the Department conclude that Company does incur a SOT obligation, please provide guidance on how Company should calculate same given that Company is not the purchaser/owner of the dumpsters or portable toilets/handwashing stations. As referenced above, third-party contractors purchase the dumpsters and portable toilets/handwashing stations for use in the waste removal service. Company does not know what the third-party contractors pay for their dumpsters or portable toilets/handwashing stations.

7. Trade Secret Information

We request that Attachments “A”, “B”, “C” & “D” be deleted from the publicly disseminated version of the Private Letter Ruling.

DEPARTMENT’S RESPONSE:

The 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.

Effective January 1, 2025, in accordance with the provisions of Article 75 of Public Act 103-592, 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 service occupation taxes, the term “transfer” includes a lease. See 35 ILCS 115/2. 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 serviceman who is a lessor must remit for each tax return period only the tax applicable to that part of the selling price actually received during such tax return period. See 35 ILCS 115/3.

Transfer of Possession

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 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.

Service Occupation Tax

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 as an incident of 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.

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 (referred to as "unregistered de minimis servicemen"). 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.

The cost ratio is a measure of the amount of tangible personal property transferred with a service. It is calculated by comparing the serviceman's product cost to his total income from services. The cost of materials that are not transferred to customers incident to a service, such as those sold at retail, removed from inventory for use, or incorporated into repairs of real estate, must be excluded when determining the cost ratio. See 86 Ill. Adm. Code 140.105(c). Except as otherwise provided with respect to multi-service situations, to calculate the cost price of the tangible personal property transferred by lease, a serviceman must first determine the useful life of the tangible personal property. The useful life is the useful life or recovery period allowed under federal law for like kind of property. See 86 Ill. Adm. Code 150.110. The serviceman must then divide the price initially paid to its supplier for the item by its useful life. Finally, convert the cost price into whatever time period is used for the lease (e.g. years or months). The result is the cost price for each rental payment. The serviceman must multiply the cost price for each rental payment by the duration of the lease during the year to determine the annual product cost used to determine cost ratio. This method to determine cost price for each rental payment must also be used in calculating Service Occupation Tax liability using the first three methods described above. This cost price is used as long as the serviceman transfers such tangible personal property by lease as an incident of a sale of service and is not limited to the useful life of the item.

Multi-Service Transaction

Multi-service situations exist where a primary serviceman subcontracts work to a secondary serviceman. See 86 Ill. Adm. Code 140.145. A primary serviceman engages the

services of a secondary serviceman in order to obtain part or all of the products and services desired by the service customer. Depending upon whether the primary and secondary servicemen are registered or de minimis will determine at what point Service Occupation Tax or Use Tax will be incurred. In multiservice situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman, or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. See 86 Ill. Adm. Code 140.301(a).

When both primary servicemen and secondary servicemen are registered, primary servicemen provide secondary servicemen with a Certificate of Resale. A primary serviceman would then incur Service Occupation Tax based upon the separately stated selling price of the property or 50% of the bill to the service customers. If the primary serviceman is registered and de minimis (that is, under the 35% threshold, or the 75% for pharmacists and printers), he may choose to remit Service Occupation Tax to the Department based upon his cost price of tangible personal property purchased from the secondary serviceman. If the cost price of the tangible personal property is not separately stated by the secondary serviceman, the cost price will be deemed to be 50% of the total bill from the secondary serviceman. Upon selling their product, servicemen are required to collect the corresponding Service Use Tax from their customers.

If an unregistered de minimis serviceman subcontracts service work to another unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman. This certification option is only available in multi-service situations when both the primary and secondary servicemen are unregistered and de minimis.

Transactions involving multiple servicemen work best if both the primary and secondary servicemen are registered. This will enable both parties to utilize Certificates of Resale. If the primary serviceman is registered and the secondary serviceman is not registered, it is possible that tax will be incurred at more than one point during the course of sale of a particular item. This will occur if the unregistered secondary serviceman has paid Use Tax with respect to an item of tangible personal property, then transfers that property to a primary serviceman who will, in turn, incur a Service Occupation Tax liability when transferring the item to the service customer.

Ruling

With respect to waste removal services involving roll-off dumpsters and portable sanitation services (portable toilets & handwashing stations) described in this letter,

COMPANY2 is engaged in making sales of service in which tangible personal property is transferred by lease or rental incident to the sale of service.

The delivery of dumpsters, portable toilets, and portable handwashing stations to customers is a transfer of possession of those items. While there may be some restrictions on use or movement of the items, this is true with a multitude of leased and rented items. Nonetheless, delivery of these items to customers for consideration is a transfer of possession of these items to the customer and constitutes a lease.

The true object of the transactions you describe in your letter constitute (i) the sale of waste removal services in which a dumpster is transferred by lease as an incident of the waste removal service and (ii) the sale of portable sanitation services in which portable toilets and handwashing stations are transferred by lease as an incident of the portable sanitation services. This is so because (i) without the waste removal service, the dumpster is of little to no value to the customer and (ii) without the portable sanitation service, the portable toilets and handwashing stations are of little to no value to the customer. As such, the provisions of the Service Occupation Tax Act apply to these transactions. Further, when COMPANY2 contracts with local businesses who operate in Illinois to obtain the products and services desired by the service customer, COMPANY2 is engaged in a multi-service situation.

COMPANY2 is registered under the Retailers' Occupation Tax Act with respect to other aspects of its business not subject to the ruling here. If the secondary serviceman COMPANY2 contracts with is registered, COMPANY2 should provide the secondary serviceman with a Certificate of Resale. If the secondary serviceman is not registered, it is possible that tax will be incurred at more than one point during the course of sale of a particular item. This will occur if the unregistered secondary serviceman has paid Use Tax with respect to an item of tangible personal property, then transfers that property to COMPANY2 who will, in turn, incur a Service Occupation Tax liability when transferring the item to the service customer. See 86 Ill. Adm. Code 140.145.

In order to calculate its tax liability, COMPANY2 must determine whether it is de minimis. If the ratio between the serviceman's annual aggregate cost of tangible personal property transferred incident to sales of service and the serviceman's total annual gross receipts from all sales of service is 35% or greater (75% or greater in the case of servicemen transferring prescription drugs or engaged in graphic arts production), the serviceman is not de minimis and must register and remit Service Occupation Tax. See 86 Ill. Adm. Code 140.106(a). When a primary serviceman purchases (including leases or rents) tangible personal property from a secondary serviceman, the primary serviceman shall determine his cost price either by using the separately stated selling price of tangible personal property set forth on the invoice from the secondary serviceman or, if no selling price is separately stated, 50% of the total invoice including labor and service charges, in the absence of proof

(e.g., the secondary serviceman's purchase invoices showing his cost price) of the consideration paid by the secondary serviceman for the purchase of such property. See 86 Ill. Adm. Code 140.141(f).

For purposes of this ruling the Department assumes that COMPANY2's sales of service in Illinois consist solely of services involving roll-off dumpsters and portable sanitation services (portable toilets & handwashing stations) described in this letter. Based on the information provided in this letter, and absent proof to the contrary, COMPANY2 is not a de minimis serviceman. The information provided indicates that invoices received by COMPANY2 from secondary servicemen do not separately state the selling price (lease or rental price) of the tangible personal property transferred. Absent proof of the consideration paid by the secondary servicemen for the purchase of the tangible personal property transferred, the Department must assume that COMPANY2's cost price for the lease or rental of such property is 50% of the secondary serviceman's total invoice including labor and service charges. Based on this statutory assumption, COMPANY2's cost price is above the 35% threshold and, therefore, COMPANY2 is not a de minimis serviceman.

COMPANY2 must register and remit Service Occupation Tax with respect to its waste removal services involving roll-off dumpsters and portable sanitation services (portable toilets & handwashing stations) described in this letter. The Service Occupation Tax incurred is based upon 6.25% of the selling price of the tangible personal property transferred incident to sales of service. COMPANY2 may determine "selling price" in the following ways:

- 1) Separately stated selling price. If the serviceman separately states the selling price of the tangible personal property transferred incident to service on billings to service customers, then his Service Occupation Tax liability is based on that separately stated selling price. However, in no event can the Service Occupation Tax liability be based on an amount less than the serviceman's cost price of the tangible personal property being transferred.
- 2) Fifty percent base. If the serviceman's bill to the service customer does not separately state the selling price of the tangible personal property transferred, the serviceman's Service Occupation Tax liability is based on 50% of the entire customer bill. However, in no event can the Service Occupation Tax be based on an amount less than the serviceman's cost price of the tangible personal property being transferred.

A serviceman who incurs Service Occupation Tax on his selling price is liable for local Service Occupation Taxes, which are based upon his location. Service Use Tax must be collected from service customers by a serviceman who incurs Service Occupation Tax on his selling price and must be based upon either the separately stated selling price of the

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tangible personal property transferred or 50% of the entire customer bill, depending upon how it is billed to the customer. See 86 Ill. Adm. Code 140.106.

Note, however, that if COMPANY2 is able to obtain proof of its de minimis status, the following provision applies. If a serviceman is below the 35% threshold (or under the 75% threshold for servicemen transferring prescription drugs or engaged in graphic arts production) but is otherwise required to be registered as a retailer under Section 2a of the Retailers' Occupation Tax Act because he incurs Retailers' Occupation Tax liability with respect to a portion of his sales, he does not incur a Use Tax liability based on his cost price of items transferred incident to service. Rather, except for a serviceman who opts to pay Service Occupation Tax on the selling price, he incurs and must remit Service Occupation Tax (including local taxes) on his cost price of the tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.109(a) and 86 Ill. Adm. Code 140.145(f).

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-7055. If you have further questions related to the Illinois sales tax laws, 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
Chairman, Private Letter Ruling Committee

SJM:sce