

The standard method of reporting receipts from sales is to report on a gross receipts basis, that is to report when payments are actually received. See 86 Ill. Adm. Code 130.401(a). (This is a GIL.)

August 11, 2010

Dear Xxxxx:

This letter is in response to your letters dated May 27, 2009 and March 5, 2010, in which you request 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 www.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 of May 27, 2009, you have stated and made inquiry as follows:

On behalf of our client, hereinafter 'Taxpayer', we are requesting a Private Letter Ruling ('PLR') pertaining to the Illinois Retailers' Occupation Tax ('ROT') and Use Tax ('UT') implications of a retroactive purchase price adjustment on 'lease finance' transactions and 'direct purchase' transactions as explained in more detail herein. An executed Power of Attorney form authorizing FIRM to represent the Taxpayer in this matter is enclosed. To the best of the knowledge of Taxpayer and FIRM: (1) the Illinois Department of Revenue ('Department') has not previously ruled on the same or similar issue for the Taxpayer or a predecessor; (2) the same or similar issue as not previously submitted and withdrawn by Taxpayer or FIRM prior to the Department's issuance of a PLR; and (3) Taxpayer is not under audit by or involved in litigation with the Department.

I. Overview and Statement of Facts

TAXPAYER, headquartered in CITY, Illinois, provides remote cardiac monitoring services ('Services') directly to individuals ('Customers') pursuant to a prescription issued by each individual Customer's physician. Taxpayer is a wholly-owned subsidiary of ABC which, in turn, is a wholly owned subsidiary of XYZ, a healthcare technology and solutions provider listed on the ___ Stock Exchange.

In connection with the provision of Taxpayer's Services to Customers, Taxpayer will provide each Customer with a Cardiac Monitoring Device ('Device') to use during the monitoring period, which is generally up to 30 days. While possession of the Device is transferred to the Customer for a short period of time, title to the Device does not transfer to the Customer and Taxpayer does not impose a separate charge for use of the Device, apart from its charge for the Services. At the end of the monitoring period, Customers are required to return the Device to the Taxpayer's CITY, Illinois facility.

XYZ manufactures the Devices outside of the United States. Taxpayer is the sole authorized user of the Devices in the United States. Taxpayer acquires Devices in two ways. First, Taxpayer directly purchases some of the Devices from XYZ (hereinafter referred to as 'Purchase Transactions'). Second, Taxpayer, in order to utilize third-party financing, leases Devices from an unrelated financing company ('Finance Company') located outside of Illinois (hereinafter referred to as 'Financed Transactions'). For both acquisition methods, XYZ ships the Devices directly to the Taxpayer in CITY, Illinois.

Additional Information Pertaining to Purchase Transactions

Taxpayer considers itself the consumer of the Devices for Illinois ROT/UT purposes. XYZ, the foreign manufacturer/supplier, is not engaged in doing business in Illinois for ROT/UT purposes and is not registered with the Department to collect or remit ROT or UT. Accordingly, at the time each Device is purchased, Taxpayer self-assesses Illinois UT based upon the sale price charged by XYZ, and remits the tax due on its monthly Illinois Sales and Use Tax Returns.

Additional Information Pertaining to Financed Transactions

With respect to Financed Transactions, Taxpayer places all purchase orders for Devices directly with XYZ. The orders and all of Taxpayer's rights and interest to the Devices, if any, are assigned to the Finance Company. XYZ issues an invoice directly to the Finance Company and the Finance Company pays the agreed upon sale price directly to XYZ. As noted above, the Devices are drop shipped directly to Taxpayer's Illinois facility. During the lease term, the Devices remain the property of the Finance Company and Taxpayer does not hold any right, title or interest in the Devices other than the right to use and possess the property under the terms of the lease. In accordance with the assignment, therefore, title to the Devices passes directly from XYZ to the Finance Company and, thus, a sale occurs between those parties. The leases involved in the Financed Transactions are regarded by Finance Company and Taxpayer as financing or capital leases for income tax and accounting purposes, and have a nominal (one dollar) buy-out for each Device at the end of the lease term. Title to the Devices is transferred to the Lessee at the end of the lease term, after the payment of a nominal (one-dollar) buyout charge. Though title actually transfers from the Finance Company to the Taxpayer (and a sale for sales tax purposes occurs) at the end of the lease term, Taxpayer, for accounting and tax purposes, includes the Devices as assets in its books and records and depreciates them throughout the lease term. A copy of the master lease agreement between Finance Company and Taxpayer are provided for review.

The Finance Company and the Taxpayer treat the leases as conditional sales for Illinois sales/use tax purposes. Additionally, at the time the lease was entered into, the Devices were located at Taxpayer's CITY, Illinois facility. Because the leased property was located in Illinois at the time the lease of the Devices that were acquired in 2008 were

initiated, Finance Company considered the sales as Illinois sales, remitted ROT at the rate of 10.25% and collected an equivalent reimbursement amount (separately stated as sales tax on each invoice) from Taxpayer as each lease payment was received.

Retroactive Pricing Adjustment

In February 2009, during the process of closing the 2008 financial/accounting books for its affiliated group (which includes XYZ, Corporation and Taxpayer), XYZ engaged in a transfer pricing study. As a result of the study, it was determined that a significant increase in the price charged for the Devices used by Taxpayer was appropriate (hereinafter referred to as the 'Price Increase'). In addition to imposing the Price Increase on prospective transactions, XYZ determined that the Price Increase, based upon the transfer pricing study, should be retroactive for the open 2008 calendar/accounting year for all devices delivered to Taxpayer throughout calendar year 2008. As a result, in February 2009, XYZ and Taxpayer booked retroactive accounting entries to reflect the entire Price Increase for the Devices in the December 2008 accounting period, including an increase in Taxpayer's intercompany payable to XYZ. The effect of this accounting entry was to increase the book value of the Devices. This is the first and only adjustment of this nature between the parties, and historical pricing for the Devices has been steady relative to each new release of the Devices as technology advances.

With respect to Financed Transactions, the Price Increase did not alter the amounts due to the Finance Company, or any other rights or obligations of Taxpayer or the Finance Company under the lease/conditional sale agreement. Furthermore, Finance Company did not make any additional payments to XYZ or receive any additional receipts or other consideration from any party as a result of XYZ's Price Increase. As noted above, the retroactive accounting entries made on Taxpayer's books and records for the December 2008 accounting period reflect the Price Increase for both Direct Purchases and Financed Transactions that occurred during 2008. As further noted above, Devices under the financing/capital lease are also accounted for on the books of the Taxpayer and, as a result of the retroactive Price Increase, also required an accounting adjustment to the asset's book value and depreciation calculations. All Devices financed under the Lease Agreement in 2008 (and, thus, subject to the Price Increase) are still under lease. Consequently, the Taxpayer has not yet acquired title to the Devices from Finance Company and, thus, has not yet purchased the Devices pursuant to the end-of-lease term nominal buyout provision. The Price Increase relates to Taxpayer's orders for the Devices which were placed with XYZ and subsequently assigned to the Finance Company.

II. Rulings Requested

We respectfully request that the Department issue the following rulings:

1. The UT due resulting from the retroactive Price Increase associated with Devices acquired in Purchase Transactions (as described above) and delivered in 2008 should be reported in February 2009.
2. The retroactive Price Increase and corresponding payments associated with Devices acquired in Financed Transactions (as described above) and delivered in 2008 are not subject to ROT or UT.

3. In the event that the Department determines that the Price Increase associated with Financed Transactions in the preceding paragraph (Rulings Requested No. 2) is subject to ROT or UT, the tax due should be reported in February 2009.

III. Authority and Analysis in Support of Rulings Requested

A. PURCHASE TRANSACTIONS:

i. The Price Increase Associated with Purchase Transactions are Taxable.

Illinois imposes the Retailer's [sic] Occupation Tax ('ROT') on persons, i.e., retailers, engaged in the selling of tangible personal property ('TPP') at retail in Illinois. 35 ILCS §§120/2. Illinois also imposes the Use Tax ('UT') on purchasers of TPP at retail for use in Illinois. 35 ILCS §105/3. A seller that incurs ROT on a sale of TPP reimburses itself through the collection of the UT from the purchaser. 86 Ill. Admin. Code §130.101(d).

In general, the ROT is imposed on the gross receipts from sales of TPP by a retailer. 35 ILCS §§ 120/2-10. Gross receipts are defined as 'the total selling price or amount of such sales.' 35 ILCS §120/1. 'Selling price' generally means the consideration for a sale valued in money, whether received in money or otherwise, including cash, credits, services and property. 35 ILCS §§120/1, 105/2. The UT is imposed on the selling price of the TPP. 35 ILCS §§105/3-10. The transfer must be for the purpose of use or consumption and not for the purpose of resale in any form as TPP. 35 ILCS §§120/1; 105/2. If a retailer is not registered for ROT purposes in Illinois, nor required to collect use tax from the purchaser, the purchaser must self-assess UT and remit the tax directly to the Department. 35 ILCS §105/10.

XYZ sells Devices directly to Taxpayer for Taxpayer's own use and consumption. Accordingly, XYZ is a retailer engaged in the business of making sales at retail. XYZ does not have a physical location, property or the presence of employees or agents in Illinois and, therefore, is not engaged in doing business in Illinois and is not required to be registered to remit or collect Illinois ROT or UT. With regard to Purchase Transactions, the Devices are delivered via common carrier to Taxpayer's Illinois facility for use in Illinois. Taxpayer is unable to qualify for an exemption from tax and, accordingly, self assesses UT on all Devices acquired through Purchase Transactions.

The retroactive Price Increase agreed to by XYZ (the retailer) and Taxpayer (the retail purchaser) are additional receipts to the retailer that relate to certain prior sales of Devices. The Price Increase is additional consideration pertaining to those retail sales and, thus, increases the selling price (i.e., tax base) of the Devices and results in additional Use Tax owed by the Taxpayer.

ii. Additional UT owed as a Result of the Price Increase Should Be Reported in February 2009.

As noted above, a seller's ROT liability is measured by the seller's gross receipts from the sale of TPP. When filing and remitting ROT liability, the state's preferred method, thus, is to report tax due when payments are received. ST 01-0037 GIL. From a self-assessing purchaser's perspective, UT is generally reported at the time a payment is made to the retailer following the receipt of the vendor's invoice. The vendor's invoice is the means by which a purchaser identifies the sales price or tax base from which to determine the amount of tax due. This timing generally coincides with reporting/timing

requirements for registered retailers remitting ROT. Even with respect to deferred payments (payment/credit plans extended by the retailer), the ROT is not due until the payment is received by the Retailer (for a cash basis retailer), or until the billing for each payment is issued (for an accrual basis retailer). 86 Ill. Adm. Code 130.401(a). Furthermore the Use Tax act provides that:

Where [TPP other than property required to be registered with an agency of the state] is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part thereof, is extended beyond the close of the period for which the return is filed, the retailer, in collecting the tax ... may collect for each tax return period, only the tax applicable to that part of the selling price actually received during such tax return period.

With respect to the Purchase Transactions, neither the retailer (XYZ) nor the retail purchaser (Taxpayer) had any knowledge of the Price Increase until February 2009 when the parties agreed to the retroactive increase. Either under a cash basis methodology or an accrual basis methodology, the earliest appropriate tax reporting period from a retailer's perspective would be February 2009, since prior to February 2009 there were no payments made associated with the Price Increase nor were there any accruals for the Price Increase made by the retailer until February 2009. It was during February 2009 when XYZ and the Taxpayer adjusted their 2008 accounting books and records (specifically the adjustment was applied to the December 2008 accounting period) which had not yet been closed during the year-end close process. Treatment of a self-assessing purchaser, where, as here, the retailer is not engaged in doing business in Illinois, should be consistent with the treatment of the selling retailer, especially considering Taxpayer's unique facts and circumstances involved here.

B. FINANCED TRANSACTIONS:

i. Taxpayer's Financed Transactions are Conditional Sales Transactions

As discussed above, Taxpayer's Financed Transactions involve the acquisition of some of the Devices through a financing lease with a third-party financing company. The financing lease has a provision that allows the Taxpayer to purchase the Devices from the Finance Company at the end of the lease term for one dollar. For purposes of determining the tax consequences of leasing tangible personal property in Illinois, it must first be determined whether the lease is a 'true lease' or a 'conditional sale' for Illinois ROT and UT purposes. 86 Ill. Admin Code § 130.2010.

A 'true lease' generally has no bargain purchase buyout provision at the close of the lease period. If a buy out provision does exist, it must be a fair market value purchase option in order to 'maintain the character of the true lease.' 86 Ill. Admin. Code §130.2010(a), (b); Let. Rul. ST 99-0169-GIL (May 17, 1999). Lessors of tangible personal property under a true lease are deemed to be the users of that property and are subject to UT when purchasing TPP which they rent or lease to others. Ill. Admin. Code Sec. 130.2010(b). Consequently, lessors incur a UT liability based on their cost price of the items they purchase for leasing purposes. The lessor must either pay the UT to the seller or self-assess and pay it directly to the Department. 86 Ill. Admin. Code 130.2013(a). Moreover, as the ROT and UT are imposed at the time the assets are acquired, the rent or lease of TPP is not subject to tax. 86 Ill. Admin. Code §§150.305(e), 150.1201.

The Illinois Statutes do not define the term 'conditional sale.' However, the Department's regulations provide that when a transaction involves a lease with a dollar or other nominal option to purchase the leased assets (i.e., buyout) at the end of the lease term, the transaction is considered to be a conditional sale from the outset, and all of the Illinois retailer's receipts from the transaction are subject to ROT. 86 Ill. Admin Code § 130.2010(a) The Department also provided the following general information pertaining to conditional sale transactions:

The lessors/retailers owe Retailers' Occupation Tax on any installment payments when they are received by the lessors/retailers. The lessees/purchasers owe corresponding Use Tax on the amount of the installment payments that are collected by the lessors/retailers. ST 00-0135-GIL.

Because of the nominal (one-dollar) buyout provision at the end of the lease term, the Finance Company and the Taxpayer treated the leases involved in the Financed Transactions as conditional sales for Illinois ROT/UT purposes. Additionally, at the time that the lease was entered into, the Devices were located at Taxpayer's CITY, Illinois facility. Because the property was located in Illinois at the time the lease was initiated, Finance Company, a retailer registered for Illinois ROT/UT purposes, considered the sales as Illinois sales and remitted ROT at the rate of 10.25% and an equivalent reimbursement amount, which included UT, was separately stated as sales tax on each invoice and collected from Taxpayer as each lease payment was received.

ii. With regard to Financed Transactions, Finance Company's Purchases from XYZ are Exempt Purchases for Resale to the Taxpayer.

As outlined above, Taxpayer submits purchase orders for all Devices directly to XYZ. With regard to those Devices that Taxpayer decides to acquire utilizing third-party financing (i.e., a financing lease), Taxpayer assigns the purchase orders along with all of Taxpayer's rights and interest, if any, to the Devices to Finance Company. When a purchase order is assigned to Finance Company, XYZ invoices Finance Company directly and ships the Devices to Taxpayer's Illinois facility, and Finance Company pays for the Devices by rendering a payment directly to XYZ.

The term 'sale at retail' specifically excludes sales to a purchaser for purposes of resale. 35 ILCS §§ 105/2. A lessor/retailer may purchase property for resale from a supplier when the property will immediately/subsequently be 'leased' to a lessee in qualifying conditional sale transaction. See ST 94-0050-GIL, ST 02-0211-GIL.

As discussed above, Finance Company's 'lease' of the Devices to Taxpayer is a conditional sale transaction, which is treated as a sale for ROT/UT purposes. Consequently, Finance Company's purchases of the Devices from XYZ for subsequent lease (i.e., conditional sale) to Taxpayer are exempt purchases for resale.

iii. The Price Increase, as it Pertains to Leased Transactions is Not Subject to ROT or UT

a. The Price Increase Relates to the Sales Made by XYZ for Resale

As discussed above, XYZ engaged in a transfer pricing study and determined that it would be appropriate to significantly increase the intercompany price charged for the Devices ordered by Taxpayer. XYZ also determined that it was appropriate to impose the Price Increase retroactively on Devices ordered by the Taxpayer during the 2008 calendar year. Taxpayer, who is dependent on XYZ as the sole supplier of the Devices needed to provide its services, agreed to pay the additional amount on all Devices delivered since January 1, 2008. This is the first Price Increase of this kind between the parties and prices for the Devices have been steady (relative to the Device type and version) for the last several years.

With regard to Financed Transactions, the sales made by XYZ that are subject to the Price Increase are not retail sales but, rather, as discussed in the preceding section, the sales are sales for resale made directly to the Finance Company. Taxpayer assigned its purchase orders, rights and interest in the Devices, if any, to the Finance Company and, to date, has not at any point held title to the Devices purchased in 2008, which are still owned by the Finance Company under the lease agreement. Though XYZ sold the Devices and issued invoices directly to the Finance Company, XYZ sought payment directly from its wholly owned subsidiary, i.e., the Taxpayer. Finance Company held title to the Devices and had no obligation to pay additional monies to XYZ. Taxpayer paid the Price Increase to XYZ but, as indicated above, it was the Finance Company that purchased the Devices for resale and Taxpayer did not actually purchase the Devices from XYZ.

Because the Price Increase relates to sales of the Devices made by XYZ, which were sold to Finance Company for resale and not to Taxpayer, the Price Increase paid by Taxpayer is not subject to ROT or UT.

b. The Price Increase Does Not Pertain to or Affect the Amount of ROT or UT Due on the Retail Conditional Sale Transaction

Finance Company and Taxpayer entered into a financing lease transaction that is regarded as a conditional sale for ROT/UT purposes. Finance Company is registered as an Illinois retailer that is subject to the ROT. Illinois imposes the ROT on persons (i.e., retailers) engaged in the selling tangible personal property ('TPP') at retail in Illinois. 35 ILCS §§120/2 Illinois also imposes the UT on purchasers of TPP at retail for use in Illinois. 35 ILCS §105/3. A seller that incurs ROT on a sale of TPP reimburses itself through the collection of the UT from the purchaser. 86 Ill. Admin. Code §130.101(d). In general, the ROT is imposed on the gross receipts from sales of TPP by a retailer. 35 ILCS §§ 120/2-10. Gross receipts are defined as 'the total selling price or amount of such sales.' 35 ILCS §120/1. Like the ROT, the UT is imposed on the selling price of the TPP purchased at retail. 35 ILCS §§105/3-10. 'Selling price' generally means the consideration for a sale valued in money, whether received in money or otherwise, including cash, credits, services and property. 35 ILCS §§120/1, 105/2.

Finance Company has remitted ROT to the Department and has collected UT, including a reimbursement of local ROT, from Taxpayer on all lease payments received in connection with the financing lease/conditional sale transaction. Finance Company was not a party to the Price Increase transaction between XYZ and Taxpayer, and has not received additional receipts or other consideration from either of those entities. Furthermore, Finance Company's interest in the Devices as titleholder remained absolute and, having no further obligations to either party outside the standard terms involved in the financing lease, Finance Company's interest was not impacted by the

Price Increase agreement between XYZ and Taxpayer. Having received no additional cash receipts or other consideration, the Price Increase, thus, has not impacted the retailer's/Finance Company's gross receipts or the corresponding retail selling price, which is the tax base for purposes of the ROT required to be remitted by the Finance Company as well as the UT required to be paid by the Taxpayer, which was collected by the Finance Company.

Taxpayer's interest and rights to the Devices, which are determined under the terms of the financing lease agreement, also were not impacted by the Price Increase since Taxpayer will take full title (XYZ does not and will not have an interest in the Devices during or after the lease term) to the Devices after making the payments to Finance Company that are required under the lease agreement, including the nominal one-dollar buyout, regardless of whether Taxpayer makes any payments to XYZ associated with the Price Increase. In essence, Taxpayer's agreement to make additional payments relating to prior (2008) deliveries of the Devices, financed or otherwise, was an accommodation, not a legal obligation, to its sole source supplier upon which Taxpayer is dependent to continue its operations in future years. Under accounting and income tax rules, which do not control ROT and UT implications, Taxpayer treats the Devices acquired via financing leases as its own assets subject to depreciation, even though Finance Company holds legal title to the assets. For accounting and income tax purposes, Taxpayer has included the retroactive Price Increase in the asset acquisition/book value and depreciable base of the Devices. As noted above, the retroactive Price Increase and corresponding accounting income tax adjustments made to Taxpayer's accounting books and records does not impact the retailer's/Finance Company's gross receipts or the sales price involved in the retail financing lease/conditional sale transaction. To date, Taxpayer has not taken title to the Devices delivered in 2008, which are still within the term of the lease agreement. Consequently, no additional ROT or UT is owed by the Finance Company or the Purchaser on the conditional sale transactions as a result of the Price Increase.

iv. In the event that the Department ultimately determines and/or rules that the Price Increase associated with Financed Transactions is subject to ROT or UT, the tax due should be reported in February 2009, the reporting period in which the parties first became aware of and agreed to the retroactive Price Increase.

The discussion in Section III(A)(ii) pertaining to Purchase Transactions above is equally relevant to Financed Transactions and is incorporated here via reference. For the same reasons articulated in the referenced section above, February 2009 would be the appropriate reporting period in the event the Department determines that the retroactive Price Increase is subject to ROT or UT.

We have been unable to locate authority contrary to Taxpayer's views and the rulings requested above.

If any additional information or documentation is needed to issue the requested rulings, or if you have any questions, please contact me.

In your letter of March 5, 2010, you have stated and made inquiry as follows:

As we have discussed, ('FIRM, or we') is submitting this Addendum to supplement our client's, TAXPAYER(hereinafter 'Taxpayer'), request for Private Letter Ruling ('PLR')

dated May 27, 2009. This Addendum presents additional facts that we believe are relevant to the issues upon which the Taxpayer is seeking a ruling from the Illinois Department of Revenue ('Department'). We have also provided some clarification on the issues original [sic] addressed in our ruling request. Finally, we have raised a new issue relating to the application of the Illinois temporary storage exemption to the Taxpayer's Cardiac Monitoring Devices ('Devices').

I. Supplemental Facts

The facts below are in supplement to those presented in the May 27, 2009 request for PLR. As such, these facts are meant to be read in conjunction with the facts presented in the prior request.

Overview and Statement of Facts

XYZ is a COUNTRY Corporation and the parent corporation of XYZ123, an COUNTRY2 corporation. XYZ123 directly and indirectly owns 100% of CORPORATION, a STATE Corporation. CORPORATION owns 100% of TAXPAYER, also a STATE Corporation. The Taxpayer was formerly known as CORPORATION1.

Retroactive Pricing Adjustment

In our original ruling request, we had indicated that XYZ engaged in a transfer pricing study. We now know that the transfer pricing study was issued to XYZ123. Attached is a copy of the transfer pricing study dated March 3, 2009.

We had also indicated that as a result of the transfer pricing study, it was determined that a significant increase in the price charged for the Devices used by the Taxpayer was appropriate. We are now in possession of the sales agreement between XYZ123 and the Taxpayer for the Devices. Attached is a copy of the sales agreement. Please note that the agreement is between XYZ123 and ABC. ABC was the former name of the Taxpayer.

Although the agreements calls for the parties to establish the price for the Devices and once said price had been established, XYZ123 may not increase the price until after December 31, 2011. As a result of the transfer pricing study and prior to the final report being issued, XYZ123 and the Taxpayer agreed to adjust the sales price retroactively for all Devices delivered during the 2008 calendar/accounting year. This adjustment was made in February 2009 and reflected on both parties' financial statements for the month ending December 2008. It is anticipated that this price adjustment was an isolated incident and similar event, although possible, are not anticipated to occur in the future.

As stated in the initial ruling request, Taxpayer acquires the Devices in one of two ways. First, Taxpayer directly purchases the Devices from XYZ. Second, the Taxpayer uses an unrelated third party financing company ('Finance Company') located outside Illinois to lease (i.e. engage in a conditional sale in Illinois) the Devices. The retroactive price adjustment applied to all direct purchase Devices that were delivered in 2008. However, the Devices that were purchased by the Finance Company did not reflect the retroactive price adjustment; the Taxpayer paid the price adjustment directly to XYZ.

Temporary Storage Exemption

XYZ manufactures the Devices outside of the United States. Taxpayer is the sole authorized user of the Devices in the United States. As mentioned above, Taxpayer acquires Devices in two ways: direct purchases from XYZ (hereinafter referred to as 'Purchase Transactions'); and via third-party financed leases from the Finance Company (hereinafter referred to as 'Financed Transactions'). In Purchase Transactions the Taxpayer acquires title to the devices outside Illinois, but takes possession of the devices upon shipment to the Taxpayer via common carrier in CITY, Illinois. For Financed Transactions, the Taxpayer treats the leases as conditional sales for Illinois sales/use tax purposes. Additionally, at the time the lease was entered into, the Devices were located at Taxpayer's CITY, Illinois facility.

In connection with the provision of Taxpayer's Cardiac Monitoring Services ('Service(s)') to customers, Taxpayer will provide each customer with a Device to use during a 21-day monitoring period. While possession of the Device is transferred to the Customer for a short period of time, title to the Device does not transfer to the customer and Taxpayer does not impose a separate charge for use of the Device, apart from its charge for the Services. At the end of the monitoring period, customers are required to return the Device to the Taxpayer's CITY, Illinois facility to process the device for the next patient's use.

Each device is designed and manufactured to endure several years of patient use; however the cables and electrodes peripheral to the device are disposed [sic] after each patient use. Upon receipt of a returned device in Illinois it is sterilized and the aforementioned cables and electrodes are replaced to prepare the device for the next patient's use.

II. Additional Ruling Requested

We respectfully request that the Department issue the following rulings:

The temporary storage exemption from Illinois Use Tax ('UT') will allow the repeated return to Illinois of Purchased Devices from outside the state for the purpose of further preparation/processing by the taxpayer and additional use outside the state without the imposition of UT.

The Expanded Temporary Storage Exemption from Illinois UT will allow the repeated return to Illinois of Financed Transactions from outside the state for the purpose of further preparation/processing by the taxpayer and additional use outside the state without the imposition of Retailers' Occupation Tax ('ROT').¹

III. Authority and Analysis in Support of Rulings Requested

A. PURCHASE TRANSACTIONS

Although the contract between the Taxpayer and XYZ did not call for a price adjustment to be made for Devices that were purchased and delivered in 2008, the parties nonetheless mutually agreed to make the price adjustment. The parties agreed to make the price adjustment after a transfer pricing study was undertaken. The price

¹ This assumes proper application by the taxpayer to utilize this exemption and authorization by the State of Illinois.

adjustment was made in February 2009 and was booked by both parties on their December 2008 financial records.

From a practical standpoint, the Taxpayer had no way of knowing that their acquisition of Devices that were acquired and delivered in say, January 2008, would later be adjusted by the parties. The actual adjustment took place in February 2009. From a penalty perspective, the Taxpayer should not be penalized for not reporting the adjustment in the actual month of the delivery during 2008, if they had no way of knowing what the adjustment would have been until February of the following year.

Although not currently contemplated, it is possible that retroactive pricing adjustments will occur for future Device purchases by the Taxpayer.

B. FINANCED TRANSACTIONS

The pricing adjustment also applies to Financed Transaction. However, in the case of the Financed Transactions, the Taxpayer and not the Finance Company paid the retroactive price adjustments directly to XYZ. The price adjustment did not run through the Finance Company. The payment of the price adjustments by the Taxpayer should not change the character of the Financed Transactions. Finance Company's purchases from XYZ for subsequent leases to Taxpayer should be deemed conditional sales to the Taxpayer and should be treated as exempt purchases for resale.

The price adjustments related to the sale of the Devices made by XYZ, which were sold to Finance Company for resale and not to Taxpayer, as such, the price adjustment paid by Taxpayer should not be subject to ROT or UT.

Similar to the purchased transactions, we do not anticipate the retroactive price adjustments to be a reoccurring issue for future financing of the Devices by the Taxpayer. However, the Taxpayer will continue to acquire Devices from XYZ using a third party Finance Company.

C. TEMPORARY STORAGE EXEMPTION: 86 Ill. Adm. Code

PURCHASE TRANSACTIONS

As discussed above, the title to Purchased Devices is acquired by the taxpayer outside the State of Illinois and the devices are shipped via common carrier into Illinois and stored for shipment outside the state and the provision of services to patients. Currently, the taxpayer pays Illinois UT on each device it acquires.

86 Ill. Adm. Code 150.310 indicates that tangible personal property acquired outside of the state that is subsequently brought into the state, stored temporarily and subsequently used solely outside the state is exempt from tax as it is subject to the state's temporary storage exemption. 86 Ill. Adm. Code 150.310(a)(4) indicates that this exemption will not be tainted if the property during its time in Illinois is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, so long as it is used solely outside the state.

In this matter, devices are acquired outside the state and shipped into the state where possession is taken by the taxpayer. Given that these devices will be used outside of Illinois in the provision of a cardiac monitoring service and their only contact with the

state prior to interstate shipment will be storage and processing (i.e., sterilization and replacement of cables and electrodes), it is asserted that these devices would qualify for the temporary storage exemption under 86 Ill. Adm. Code 150.310. This assertion is based on the fact that the activities performed on the device (sterilization and replacement of cables and electrodes) would qualify as one of the enumerated activities (i.e. converting, fabricating, manufacturing, printing, processing or shaping, of property) that will not taint the application of the Illinois temporary storage exemption 86 Ill. Adm. Code 150.310(a)(4).

FINANCED TRANSACTIONS

As discussed above, relative to Financed Transactions, the Taxpayer treats the leases as conditional sales for Illinois sales/use tax purposes. Additionally, at the time the leases are entered into, the Devices are located at Taxpayer's CITY, Illinois facility. Because the leased property is located in Illinois at the time of the lease of the Devices, the Finance Company considers the sales as Illinois sales and has remitted ROT at the rate of 10.25% and collected an equivalent reimbursement amount (separately stated as sales tax on each invoice) from Taxpayer as each lease payment was received.

86 Ill. Adm. Code 150.310(a)(6) indicates that persons holding a valid Expanded Temporary Storage Permit may claim the Expanded Temporary Storage Exemption by providing their Illinois suppliers with a certification that the tangible personal property received in Illinois will be temporarily stored in Illinois for the purpose of being subsequently transported outside this State for use or consumption. 86 Ill. Adm. Code 150.310(a)(6) further indicates that this exemption will not be tainted if the property during its time in Illinois is altered by converting, fabricating, manufacturing, printing, processing or shaping and, as altered, so long as it is used solely outside the state.

In this matter, financed devices are leased in the state, but will be used outside of Illinois as part of the cardiac monitoring service and the devices [sic] only contact with the state prior to interstate shipment will be storage and processing (i.e. sterilization and replacement of cables and electrodes), it is asserted that these devices would qualify for the Expanded Temporary Storage Exemption (once the taxpayer is properly registered for such purposes) under Ill. Adm. Code 150.310(a)(6)(D). This assertion is based on the fact that the activities performed on the device (sterilization and replacement of cables and electrodes) would qualify as one of the enumerated activities (i.e. converting, fabricating, manufacturing, printing, processing or shaping, of property) that will not taint the application of the Illinois temporary storage exemption. 86 Ill. Adm. Code 150.310(a)(6).

With respect to sales and use tax compliance in other states outside Illinois, the Company is in [sic] process of analyzing it [sic] compliance requirements.

PROCEDURAL MATTERS

FIRM, as an authorized agent for the taxpayer, is requesting this Private Letter Ruling on behalf of said taxpayer. Please contact me should you have questions or require additional information. If you are inclined to rule unfavorably on any part of this Private Letter Ruling request, we respectfully request a conference to discuss this matter in further detail and reserve the right to withdraw any and all parts of the Private Letter Ruling request.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department has determined that the issues presented in your letters are ones of general applicability and therefore declines to issue a Private Letter Ruling. However, we hope the following will be helpful in addressing your question.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is based on the amount of gross receipts received by the retailer on the sale of that property. "Gross receipts" means all the consideration actually received by the seller, except traded-in tangible personal property. See 86 Ill. Adm. Code 130.401.

Retailers who report and pay Retailers' Occupation Tax on gross receipts actually received on sales of tangible personal property file on the "gross receipts" basis. See 86 Ill. Adm. Code 130.401. The gross receipts basis is the preferred method for filing sales tax returns. Retailers who report and pay Retailers' Occupation Tax up front on the total selling price of tangible personal property, even though all gross receipts have not yet been received from the purchaser, file on the "gross sales" basis. A procedure is available for taxpayers who desire to change to the gross sales (accrual) basis where they notify the Department, in writing, of their intention to change reporting methods. See 86 Ill. Adm. Code 130.401(a).

A Retailer who reports and pays Retailers' Occupation Tax on the "gross receipts" basis who subsequently receives additional gross receipts for a sale of tangible personal property made in a prior reporting period should report and pay Retailers' Occupation Tax on the additional gross receipts in the reporting period in which the "gross receipts" are received.

You also inquired about the temporary storage exemption and expanded temporary storage exemption. A temporary storage exemption from the imposition of use tax is available where tangible personal property is "acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State." 35 ILCS 105/3-55(e). See also 86 Ill. Adm. Code 150.310(a)(4).

Subsection (f) of Section 3-55 also provides a sales and use tax exemption for personal property purchased from an Illinois retailer by a taxpayer engaged in centralized purchasing activities in Illinois who will, upon receipt of the property in Illinois, temporarily store the property in Illinois for the purpose of subsequently transporting it outside the State for use or consumption thereafter solely outside the State or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside this State and thereafter used or consumed solely outside this State. 86 Ill. Adm. Code 150.310(a)(6). 'Centralized purchasing' is defined as the procurement of tangible personal property by persons who purchase tangible personal property solely for use or consumption outside Illinois, who take delivery of that tangible personal property in Illinois and who temporarily store that tangible personal property in Illinois prior to transporting it outside the State for use or consumption solely outside Illinois.

Both of the exemptions only apply to transactions in which the tangible personal property is acquired for temporary storage and after the temporary stay in Illinois the tangible personal property is shipped out of Illinois and used solely outside Illinois, never to return to Illinois. If the person knows at the time the tangible personal property is brought into Illinois or at the time of the purchase of the tangible personal property in Illinois that after the temporary stay the tangible personal property will return to Illinois, the exemption cannot be claimed. In the event that tangible personal property for which the temporary storage exemption has been claimed is temporarily stored in Illinois and transported outside this State for use or consumption, but for some reason subsequently returns to Illinois and is used here, the tangible personal property will be subject to tax. See 86 Ill. Adm. Code 150.310.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk