

Persons who are engaged in the business of renting automobiles in Illinois under rental terms of one year or less are subject to the Automobile Renting Occupation and Use Tax set forth at 35 ILCS 155/1 et seq. See 86 Ill. Adm. Code 180.101. (This is a GIL.)

October 29, 2010

Dear Xxxxx:

This letter is in response to your letter dated June 28, 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 you have stated and made inquiry as follows:

COMPANY operates a store in CITY; we rent recreational vehicles (RVs) as well as a variety of camping and convenience items. We currently file for both the Retailer's [sic] Occupation Tax and the Automobile Rental Occupation Tax. I would like to obtain additional information and clarification regarding the specific taxable status and filing status of the various products and services we offer.

At the time of vehicle pick-up the following charges are incurred:

- Base rental charges for the RV itself.
- An \$18 per rental day charge for insurance. This charge is mandatory, not optional.
- Vehicle prep fee. This is a mandatory charge for our international customers. This is not a cleaning fee (see below).

At the time of vehicle pick-up our customers have the option to purchase the following products:

- Mileage packages that allow for a certain number of miles.
- Generator packages that allow for a certain number of hours usage.
- One-way fee. This fee is charged when our customer is going to return the vehicle at a different COMPANY store.
- Bed, Bath & Kitchen kits containing sheets, towels, dishes, tableware, etc.

- Bicycles, chairs, tables, coolers, vacuum cleaners, etc.
- GPS devices.

At the time our customer returns the vehicle the store may assess additional charges:

- Additional rental days if the customer returns after the scheduled drop-off day.
- Late fee: a set fee charged when the customer returns late in the day after store hours.
- Excess mileage: for the number of miles incurred over the allowed mileage package.
- Excess generator: for the number of hours incurred over the allowed generator package.
- Vehicle cleaning and tank dumping fees.
- Refueling fee: a set fee charged when the vehicle is returned with less than a full gas tank.
- Gas/propane charge: for the actual fuel or propane needed to refill the tank(s).
- Vehicle damages. This is usually limited to a \$1,000 deductible although in certain instances the store may charge for the total estimated repair cost.

Additional facts include:

- Most of our customer rentals are short-term (under 30 days) but we do have long-term rentals, including some in excess of one year.
- We rent only motorized RVs, no trailers. The gross weight of our RVs ranges from 12,000 to 24,000 pounds.

Please clarify the taxable and filing status of these products in regards to both the Retailer's [sic] and Automobile Renting Occupation Tax. I greatly appreciate any information you could provide.

Please feel [sic] to contact me with any questions.

DEPARTMENT'S RESPONSE:

Although we cannot give you a specific answer in the form of a General Information Letter, we hope you find the following helpful.

RETAILERS' OCCUPATION TAX AND USE TAX

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. 35 ILCS 120/2; 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. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

SERVICE OCCUPATION TAX AND SERVICE USE TAX

Retailers' Occupation and Use Taxes do not apply to sales of service. The Service Occupation Tax and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. However, if no tangible personal property is transferred incident to a sale of service, the Service Occupation Tax and Service Use Tax do not apply.

If some of the transactions you are inquiring about do not involve the transfer of any tangible personal property to the customer, then they generally would not be subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax.

AUTOMOBILE RENTAL/LEASING

Persons who are engaged in the business of renting automobiles in Illinois under rental terms of one year or less are subject to the Automobile Renting Occupation and Use Tax. 35 ILCS 155/1 *et seq.* See 86 Ill. Adm. Code 180.101. This tax is imposed at the rate of 5% of the gross receipts from such business. "Gross receipts" from the renting of tangible personal property or "rent," means the total rental price or leasing price. See also, 86 Ill. Adm. Code 180.120 and 180.125. Certain separately stated charges, though, are not subject to tax and are listed in Section 180.125 of the Department's regulations. Note, however, leases are not subject to liability under the Automobile Renting Occupation and Use Tax Act if the minimum lease term is for a period greater than one year (greater than 365 days). See 86 Ill. Adm. Code 180.101.

For purposes of the Automobile Renting Occupation and Use Tax Act, the definition of "automobile" is as follows:

"'Automobile' means any motor vehicle of the first division, a motor vehicle of the second division which is a self-contained motor vehicle designed or permanently converted to provide living quarters for recreational, camping or travel use, with direct walk through access to the living quarters from the driver's seat, or a motor vehicle of the second division which is of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers, as defined in Section 1-146 of the Illinois Vehicle Code." 35 ILCS 155/2.

Section 1-146 of the Illinois Vehicle Code defines the term "motor vehicle" as:

"Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power and motorized wheelchairs. For this Act, motor vehicles are divided into two divisions:

First Division: Those motor vehicles which are designed for the carrying of not more than 10 persons.

Second Division: Those motor vehicles which are designed for carrying more than 10 persons, those motor vehicles designed or used for living quarters, those motor vehicles which are designed for pulling or carrying freight, cargo or implements of husbandry, and those motor vehicles of the First Division remodeled for use and used as motor vehicles of the Second Division." 625 ILCS 5/1-146.

See also the Department's regulation at 86 Ill. Admin. Code 180.101(b)(2)(B) which points out that pursuant to statute, second division vehicles subject to tax include self-contained motor vehicles designed or permanently converted to provide living quarters for recreational, camping or travel use, with direct walk through access to the living quarters from the driver's seat.

Please note that except for automobile rentals subject to Automobile Renting Occupation and Use Tax liability, the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

In contrast, a true lease generally has no buy-out provision at the close of the lease. If a buy-out provision does exist, it must be a fair market value buy-out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220 which can be found on the Department's website. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability on the leased property, including any related lease charges such as late charges, vehicle disposal fees, excess wear and tear fees, and excessive mileage fees imposed at the end of the lease.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq., as discussed above.

FEES/CHARGES

Without reviewing the contracts, we cannot provide you guidance concerning the specific costs associated with the other fees and charges you may assess.

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,

Debra M. Boggess
Associate Counsel

DMB:msk