ST 11-0044-GIL 05/31/2011 LEASING

This letter references the limited exemptions for leasing tangible personal property to certain exempt entities. See 86 Ill. Adm. Code 130.2011 and 130.2012. (This is a GIL.)

May 31, 2011

Dear Xxxxx:

This letter is in response to your letter dated May 19, 2011, 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 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:

> ABC is in the process of leasing vehicles to the U.S. Government. The vehicles will be owned, titled & registered in our name as Lessor. The U.S. Government will be listed as the Lessee.
>
> The U.S. Government does not provide exemption certificates but does provide a Purchase Order and will be remitting payment via ACH or wire.
>
> What is your state's policy regarding the U.S. Government's status? What type of documentation do we need from the U.S. Government to be assured that they will be allowed their exemption for a vehicle that they do not own......but are leasing?
>
> Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

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 a lessor is 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. Persons who purchase items for resale under conditional sales contracts can avoid paying tax to suppliers by providing certificates of resale that contain all the information set forth in 86 Ill. Adm. Code 130.1405. All receipts received by a lessor/retailer under a conditional sales contract are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010.

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. 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. As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Generally, the tax exempt status of lessees does not affect the tax liability of lessors. However, please note that Illinois does have two exemptions for leases to entities that have active Illinois exemption (E-numbers). The first exemption is for certain purchases of tangible personal property by persons who are leasing that property to exempt hospitals that have an active E-number issued by the Department. See the Department's regulation at 86 Ill. Adm. Code 130.2011 for the requirements regarding that exemption. The second exemption is for purchases of tangible personal property by persons who are leasing that property to a governmental body that has an active E-number issued by the Department. See the Department's regulation at 86 Ill. Adm. Code 130.2012 for the requirements regarding that exemption.

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,

Terry D. Charlton
Senior Counsel, Sales & Excise Taxes

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