

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.)

July 13, 2011

Dear Xxxxx:

This letter is in response to your letter dated June 29, 2011, 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:

After visiting the Illinois Department of Revenue Office in Des Plaines, IL, I was advised to write to the Illinois Department of Revenue Legal Services Office in order to get clarification on a tax issue. They were unable to provide me a definitive ruling as to what is the appropriate answer. They indicated what they thought the answer is, but preferred that I get a definitive ruling from your office.

My scenario is as follows:

I am a dealership located in CITY, IL. I purchase motorcycles from COMPANY and put them into a rental fleet. I have an exclusive agreement with a tour company that conducts one way trips between Illinois and STATE. For the trips going from Illinois to STATE, I initiate the rental agreements in CITY and collect the money and charge and remit the appropriate Illinois taxes. I am not allowed to initiate rental agreements for the one way rental from CITY/STATE back to CITY, IL. COMPANY will only allow an authorized STATE dealership to rent the bikes one way back to Illinois. In order to do this, I lease the bikes to a dealer in STATE for the period the bikes are in STATE until they return to Illinois. That dealer then initiates the necessary rental agreements for the return trip to CITY. Because I have the agreement with the tour company, I collect all the rental income and pay the STATE dealer a fee for his time and efforts. I have no control over whom and exactly when the bikes will leave STATE. The tour company

works with the STATE dealer to get the tour on the road. Since the rental agreements are initiated in STATE, the STATE dealer collects and remits the appropriate states taxes to the STATE.

The tax issue is:

Is my dealership in Illinois responsible to the state of Illinois for any taxes collected on the return rental from STATE to Illinois? The STATE dealer inquired about this issue and was told by the STATE that the tax should be paid to the state where the rental contract is made.

During my conversation with the Illinois Department of Revenue personnel, we discussed Illinois Department of Revenue Regulation Title 86 Part 190 Section 190.125 (Exemptions to Avoid Multi-State Transactions). I felt that this section would indicate that my dealership is not liable for any taxes on the return rental from STATE.

I look forward to hearing from you as to what the appropriate answer is to my question. Thank you in advance for your time and consideration in this matter.

DEPARTMENT'S RESPONSE:

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 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. When automobiles are purchased to be used as rental cars for terms of one year or less, they may be purchased without paying Retailers' Occupation Tax or Use Tax.

The Act applies to automobiles as the term "automobile" is defined by that Act. Section 2 of the Act defines "automobile" 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 remodelled for use and used as motor vehicles of the Second Division.” 625 ILCS 5/1-146.

Motorcycles and motor driven cycles fall within the definition of a "motor vehicle" under the Vehicle Code (they are a First Division motor vehicle) and are thus encompassed with the definition of "automobile" under Section 2 of the Act. As a result, they are subject to tax under the Act. This policy is codified in regulations governing the Act. See 86 Ill. Adm. Code 180.101.

The tax does not apply to rental receipts from the renting of automobiles under lease terms of one year or less to persons who will re-rent those automobiles to others under lease terms of one year or less. 86 Ill. Adm. Code 180.130(h).

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

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