

Information regarding sales tax liabilities in lease situations may be found at 86 Ill. Adm. Code 130.2010. (This is a GIL.)

October 12, 2011

Dear Xxxxx:

This letter is in response to your letter dated August 22, 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:

Please let this letter serve as a formal request for a Letter Ruling from your state. By way of background, COMPANY is in the business of developing software to assist companies with their transaction-based sales and use tax calculation and compliance needs, including managing product taxability rules. In that respect, we are inquiring about the taxability of the following situation:

How does Illinois treat a replacement fee for a rented book that is lost by the customer? The fee is charged at the end of the rental when the customer does not return the book. No replacement book is provided to the customer.

We understand that sales tax would be paid by the lessor at the time of purchase since the item involved is a rental book. However, it is unclear as to whether or not the replacement fee charged to the customer would incur any additional sales tax.

Please note that we are only interested in finding out about the taxability of the named issue and are not asking you to address sales to potentially exempt entities.

We appreciate your clarification of this issue at your earliest convenience. Please feel free to contact me if you have *any* questions or need further clarification. Thank you.

DEPARTMENT'S RESPONSE:

When a company rents books to customers, and the transactions are structured so that they constitute "true leases," then no Retailers' Occupation Tax (sales tax) liability is incurred on the rental receipts. Under Illinois law, "true leases" and "leases" that are actually conditional sales contracts are treated differently for Retailers' Occupation and Use Tax purposes.

True leases generally have no buy out provisions at the close of the leases. If buy out provisions do exist, they must be fair market value buy out options in order to maintain the character of the true leases. Lessors of tangible personal property under true leases in Illinois are deemed end users of the leased property and they incur Use Tax liability on their cost price of such property. As noted above, no tax liability applies to rental receipts under true leases. The only exception is automobiles rented for one year or less, which are subject to the Automobile Renting Occupation Tax. As a result, the lessee is not generally subject to sales tax liability for any related lease charges such as late charges or replacement fees.

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

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