ST 12-0005-GIL 01/20/2012 LEASING

Information regarding sales tax liabilities in lease situations may be found at 86 Ill. Adm. Code 130.220 and 86 Ill. Adm. Code 130.2010. (This is a GIL.)

January 20, 2012

Dear Xxxxx:

This letter is in response to your letter received by the Legal Services Office on January 5, 2012, 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:

> We are a college book store with two locations serving both a 4 year public institution and a 2 year community college. Currently, we offer the service of renting textbooks, as many or most college book stores today do. Originally, we were told when we called the IDOR that we should be charging sales tax on the process of renting textbooks because we did allow customers to purchase the books if they chose to keep them at any point during the rental process.
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> Recently, we had a customer question this policy and provided us with the enclosed copy of a letter from the IDOR, which he interpreted as saying that the rental fee and any subsequent penalties for late or non return of product were tax exempt. The interpretation rests on the decision as to whether our rental process is deemed to be a 'true lease' or a 'conditional lease'.
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> This issue is complicated by the fact that we have two competitors, both of whom are national college book store retail firms, one of whom does charge sales tax on rental transactions and one that does not.
>
> What we are requesting is a formal decision on this process specifically directed toward our procedures so that we can either alter those procedures or have a posted notice supporting whichever policy we adopt as being correct. I have also enclosed a copy of our rental agreement for your viewing to see if there is some wording in our document that needs to be changed to make us compliant with one direction or the other.
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> This is a fluid situation and the earliest we could get a response the better. The renting of college textbooks has become part of everyday business at most college book stores

and this tax issue especially in our state seems to be somewhat up in the air for most college retailers. We are looking for some closure on policy so that we can provide services to our customers that we know to be accurate.

Thank you for your prompt consideration of our request.

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.

Under Illinois law, lessors may not "pass through" their tax obligation to lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where the lessees agree to reimburse the lessors for the amount of the tax paid, then the lessees are obligated to fulfill the terms of the private contractual agreements.

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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