

This letter rescinds General Information Letter ST 14-0041-GIL. This letter concerns the rolling stock exemption. See 86 Ill. Adm. Code Section 130.340. (This is a GIL.)

September 4, 2014

Dear Xxxxx:

This letter is in response to your letter dated March 7, 2014, in which you request information and supersedes the letter to you dated August 8, 2014. 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](http://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:

Pursuant to 2 Ill. Adm. Code 1200.110, the purpose of this letter is to request a Private Letter Ruling (“PLR”) from the Illinois Department of Revenue (the “Department”). Our Firm represents COMPANY (“COMPANY”), a company located at ADDRESS, CITY, Illinois XXXXX pursuant to the enclosed Power of Attorney. See, Exhibit A.

COMPANY instructed this Firm to request a PLR regarding the applicability of the rolling stock use tax exemption to motor vehicles, e.g. truck tractors, COMPANY operates on a for-hire basis to transport cargo moving in interstate commerce. To the best of the knowledge of COMPANY and the Firm, the Department has not previously ruled on the same or a similar issue for COMPANY or a predecessor, and neither COMPANY nor any representatives have previously submitted the same or similar issue to the Department but withdrew the request before a letter ruling was issued by the Department. There is no audit or litigation pending with the Department regarding this issue and COMPANY. COMPANY’S FEIN is XX-XXXXXXX and the use tax period in issue is 20XX.

## **I.** **INTRODUCTION**

The relevant Illinois statutes (consistent with federal law on the issue) make clear a for-hire single-state, Illinois movement of cargo with a point of origin or destination outside Illinois by an authorized interstate motor carrier qualifies as interstate commerce under the rolling stock exemption. Informal Department guidance on the issue indicates the initial shipping documents for cargo with a point of origin outside Illinois must identify the Illinois point of destination for the cargo. Applying these requirements to the facts and law set forth below, the COMPANY vehicles in question are used more than 50% in interstate commerce and qualify for the rolling stock exemption under the trips test, notwithstanding more than 50% of the miles traveled by the vehicles are in Illinois.

## II. FACTS

COMPANY engages in business as an authorized interstate motor carrier. On MONTH 1 XX, 19XX the Federal Motor Carrier Safety Administration (“FMCSA”), successor to the Federal Highway Administration, granted COMPANY interstate motor common carrier authority and MC-XXXXXX has been continually active since MONTH2 XX, 20XX. See, Exhibit B.

On MONTH3 XX, 20XX, COMPANY entered into a Vehicle Lease and Service Agreement (the “Agreement”) with COMPANY1 d/b/a COMPANY2 (“COMPANY1”). See, Exhibit C. Pursuant to the Agreement, COMPANY currently leases XX model year 2013 BRANDX truck-tractors (the “Tractors”) and the Tractors operate in tandem with semi-trailers. Per Provision 14 of the Agreement, at the end of the XX month lease period COMPANY must return all the Tractors to COMPANY1.

Per Schedule A of the Agreement (“Schedule A”), the Tractors are domiciled at ADDRESS, CITY, Illinois XXXXX, an COMPANY3 (“COMPANY3”) DISTRIBUTION CENTER (“DISTRIBUTION CENTER”) and COMPANY1 performs service and maintenance of the Tractors in CITY, Illinois. See, Exhibit D. Schedule A further provides the Tractors have a licensed weight of 80,000 pounds and COMPANY1 annually registers the Tractors with International Registration Plan (“IRP”) apportioned license plates through the base state of STATE 1. Registration fees for the Tractors are paid to Illinois and the remaining 47 continental states plus the District of Columbia thereby authorizing the Tractors to operate inside and outside Illinois.

On or around MONTH4 XX, 20XX, COMPANY1 filed an Illinois Vehicle Use Tax Transaction Return Form RUT-25 for each Tractor. See, Exhibit E. On or around MONTH4 XX, 20XX, the parent company of COMPANY1, COMPANY4 (“COMPANY4”), remitted a check to the Department for \$XXX,XXX to pay a total use tax of \$X,XXX for each Tractor.<sup>1</sup> See, Exhibit F. Per Schedule A, COMPANY reimburses COMPANY1 for the “Local Sales Tax”, i.e., the Illinois use tax paid for each Tractor. As indicated in a MONTH2 XX, 20XX Tractor mileage invoice issued by COMPANY4 to COMPANY, the “customer has previously paid IL use tax.” See, Exhibit G.

Per the In-Service Notification in the Agreement, COMPANY placed XX of the Tractors in service on MONTH4 XX, 20XX, one on MONTH4 XX, 20XX, and the remaining two on MONTH5 XX, 20XX. See, Exhibit H. Since being placed in service, all the Tractors have been dedicated by COMPANY to the for-hire transportation of grocery products for COMPANY3. On a daily recurring basis, the Tractors transport grocery products for delivery to COMPANY3 store locations in Illinois and several surrounding states. Almost exclusive use of the Tractors has been dedicated to transporting COMPANY3 grocery products to and from the DISTRIBUTION CENTER.<sup>2</sup> Nearly 100% of the Tractor movements out of the DISTRIBUTION CENTER transport COMPANY3 store

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<sup>1</sup> The \$X,XXX in Illinois use tax is slightly more than the \$X,XXX.XX in “Local Sales Tax” stated in Schedule A of the Agreement. The difference has been absorbed by COMPANY1.

<sup>2</sup> The Tractors are only sporadically used to pull semi-trailers loaded with grocery products from an COMPANY2 DISTRIBUTION CENTER center in CITY2, Illinois or in CITY, STATE 1 for delivery to COMPANY3 grocery stores in Illinois and surrounding states.

ready packaged bread products that originate outside Illinois at COMPANY5 in CITY, STATE 2.

The practice of individual COMPANY3 stores is to place bread orders roughly 5 days in advance of shipment from COMPANY 5 in CITY, STATE 2. After each COMPANY3 store places its bread order, COMPANY3 creates a Prorate Table. See, Exhibit I. The Prorate Table identifies each COMPANY3 store placing a bread order and lists the type and quantity of bread products ordered by each COMPANY3 store. COMPANY3, as shipper of the bread products from COMPANY5, always predetermines in advance of shipment the specific COMPANY3 store locations in Illinois receiving delivery of the store ready bread products before the bread products are initially shipped from CITY, STATE 2. The bread products and Illinois delivery location identified in the Prorate Table are incorporated into the COMPANY3 prepared daily Tour Plan. See, Exhibit J. COMPANY uses the Tour Plan information for its Tractor movements of the bread products originating in STATE 2 for delivery to the COMPANY3 store locations in Illinois and several surrounding states.

At the DISTRIBUTION CENTER, inbound COMPANY3 bread products are unloaded and reloaded aboard semi-trailers pulled by Tractors, Nearly 100% of the bread products are immediately removed from inbound CITY, STATE 2 semi-trailer and loaded aboard semi-trailers at the DISTRIBUTION CENTER bound for the COMPANY3 store locations. Each semi-trailer pulled by the Tractors nearly always contains a combination of bread products that originated at COMPANY5 in CITY, STATE 2 and other COMPANY3 grocery products (that may or may not have originated outside Illinois). The Tractors depart the DISTRIBUTION CENTER pulling semi-trailers loaded with COMPANY3 bread products (and other grocery products) for delivery to COMPANY3 stores in Illinois and several surrounding states, as designated in the COMPANY3 Tour Plan. The Tractors generally return semi-trailers to the DISTRIBUTION CENTER without any COMPANY3 grocery store products onboard or with a minimal amount of close-out items, e.g. pallets, and with bread racking destined for delivery to COMPANY5 in CITY, STATE 2. In less than 20% of the return trips the semi-trailers are loaded with COMPANY3 grocery store products picked-up from various vendors in Illinois that may or may not be destined for termination outside Illinois.

According to the International Fuel Tax Agreement (“IFTA”) mileage reported for each of the Tractors domiciled at the DISTRIBUTION CENTER from the in-service date of each Tractor through MONTH4 XX, 20XX, more than 50% of the total miles for each of the Tractors were incurred in Illinois. See Exhibit K. Accordingly, after being placed in service each Tractor incurred more than 50% Illinois miles during the initial 12 month period while transporting COMPANY3 bread products that originated in CITY, STATE 2 for delivery to COMPANY3 stores in Illinois and surrounding states. As explained below, each Tractor was used more than 50% on a total trips basis in interstate commerce during the initial 12 month period and thus satisfies the rolling stock exemption.

### **III.** **LAW**

Illinois use tax statutes provide a broad rolling stock exemption to prevent the taxation of interstate commerce.<sup>3</sup> 35 ILCS 105/3-60 provides the relevant definition of interstate commerce for the rolling stock use tax exemption as follows:

Except as provided in Section 3-61 of this Act [35 ILCS 105/3-61], the rolling stock exemption applies to rolling stock used by an interstate carrier for hire, *even just between points in Illinois*, if the rolling stock transports, for hire, persons whose journeys or property whose shipments originate or terminate outside Illinois.

(Emphasis added.)

35 ILCS 105/3-55(b) discusses the prohibition against imposing use tax on rolling stock moving in interstate commerce in pertinent part as follows:

To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

The use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce or by lessors under a lease of one year or longer executed or in effect at the time of purchase of tangible personal property by interstate carriers for-hire for *use as rolling stock moving in interstate commerce* as long as so used by the interstate carriers for-hire.

(Emphasis added.)

Illinois provides a use tax statute specific to motor vehicles such as the Tractors under 35 ILCS 105/3-61(c) that further refines the definition of *use as rolling stock moving in interstate commerce* for purposes of 35 ILCS 105/3-55(b), as follows:

Beginning July 1, 2004, “*use as rolling stock moving in interstate commerce*” in paragraphs (b) and (c) of Section 3-55 occurs for motor vehicles, as defined in Section 1-146 of the Illinois Vehicle Code, when during a 12-month period the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. The person claiming the exemption shall make an election at the time of purchase to use either the trips or mileage method. Persons who purchased motor vehicles prior to July 1, 2004 shall make an election to use either the trip or mileage method and document that election in their books and records. If no election is made under this subsection to use the trips or mileage method, the person shall be deemed to have chosen the mileage method.

*For purposes of determining qualifying trips or miles, motor vehicles that carry persons or property for hire, even just between points in Illinois, will be considered used for hire in interstate commerce of the motor vehicle transports persons whose journeys or property whose shipments originate or terminate outside Illinois.*

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<sup>3</sup> The retailers’ occupation tax statutes also afford an identical rolling stock exemption designed to prevent the taxation of interstate commerce.

The exemption for motor vehicles used as rolling stock moving in interstate commerce may be claimed only for the following vehicles: (i) motor vehicles whose gross vehicle weight rating exceeds 16,000 pounds; and (ii) limousines, as defined in Section 1-139.1 of the Illinois Vehicle Code [625 ILCS 5/1-139.1]. *This definition applies to all property purchased for the purpose of being attached to those motor vehicles as a part thereof.*

(Emphasis added.)

#### **IV.** **ANALYSIS**

Under the Illinois use tax statutes cited above, COMPANY'S use of each Tractor more than 50% in Illinois (based on Illinois miles reported for IFTA during a 12 month period) qualifies as use as rolling stock moving in interstate commerce just between points in Illinois under the total trips test. All the COMPANY'S shipments from the DISTRIBUTION CENTER involve Tractors transporting COMPANY'S store ready bread products that originated outside Illinois and were predetermined by COMPANY'S in advance of shipment for delivery to store locations in Illinois and surrounding states as documented by the Prorate Table. Under these facts, we believe the Tractors qualify for the rolling stock exemption.

In addition to qualifying as an interstate trip under the rolling stock statutes, federal law fully supports the interstate nature of the single-state, Illinois moves of the Tractors. Prior to 1996, the Interstate Commerce Commission ("ICC") was frequently called upon to decide whether its jurisdiction stretched to motor carrier services that were being provided entirely in a single-state (i.e., in interstate commerce). Thus, a substantial body of case law exists that sets forth general guidelines for determining whether a single-state motor carrier service is interstate in nature. Whether transportation between two points in a single-state is interstate depends on the "essential character" of the shipment. Texas & N.O.R.R. v. Sabine Tram Co., 227 U.S. 111, 122 (1913). The critical factor is the "fixed and persisting intent" of the shipper. See e.g., Baltimore & O.S.W.R.R. Co. v Settle, 260 U.S. 166 (1922).

The longstanding rule stated by the ICC follows:

In view of the fact that "transportation in interstate or foreign commerce" between points wholly within a State . . . is not limited to that performed under joint rates or a common control, management or arrangement for a through shipment, it obviously may also include transportation within a State performed under a separate contract from that relating to transportation to or from points without the State.

William E. Rush Common Carrier Application, 27 M.C.C. 661, 674 (I.C.C. 1939).

The Firm believes that the vast majority of decided ICC and federal cases have found that the single-state (i.e., Illinois) trips in question qualify as transportation in interstate commerce.

The foregoing rule continues to govern state sales and use tax exemptions premised on a vehicle's use in interstate commerce. Recently, the Michigan Court of Appeals relying heavily on over 100 years of federal case law interpreting the use of transportation

equipment in interstate commerce found vehicles that never crossed state lines were nonetheless engaged in interstate commerce and therefore entitled to Michigan's rolling stock sales tax exemption. Alvan Motor Freight, Inc. v Dept. of Treasury, 761 N.W.2d 269 (Mich. Ct. App. 2008). In that case, (a copy of which is enclosed, see Exhibit L), the court emphasized that "courts have consistently found that even if a vessel or vehicle never leaves a state, it is used in interstate commerce if it carries goods moving in a continuous stream from an origin in one state to a destination in another." Id. at 274. Unlike the vehicles at issue in Alvan Motor Freight, as evidenced by the IFTA mileage records all the COMPANY'S Tractors also cross Illinois state lines from time-to-time, which is clearly a trip in interstate commerce.

As evidenced by the Prorate Table, the indisputable intent of COMPANY3 at all times is for the bread products to be delivered from COMPANY5 in CITY, STATE 2 for delivery to COMPANY3 stores in Illinois or surrounding states. It is the Firm's position the Tractors are principally used in interstate commerce under the long-standing federal law "shipper's fixed and persisting intent" test. As such, the Tractors transport bread products moving in interstate commerce, just between points in Illinois, which necessarily means the Tractors are used in interstate commerce under the federal standard.

We are unaware of any contrary authorities or any Illinois case law interpreting the nature of the single-state, Illinois transportation in question under the current rolling stock exemption statutes. Nonetheless, guidance in a General Information Letter ("GIL") issued by the Department addresses this issue. In ST 06-0122-GIL (a copy of which is enclosed, see Exhibit M), a sampling of the federal cases and ICC decisions were presented in a request for written guidance to confirm "certain single-state, Illinois movements of cargo constitute interstate commerce for purposes of the rolling stock sales (i.e., the retailers' occupation tax) and use tax exemption." While not directly relying on the federal standard of a shipper's fixed and persisting intent to move the cargo in interstate commerce, consistent with this long-held federal standard, the Department confirmed the rolling stock exemption applied upon evidence that "the initial documentation for a shipment of goods from out-of-state into Illinois indicates that the destination is at City B, Illinois, via the warehouse in City A, then the subsequent travel of the goods from the warehouse in City A to the destination in City B can count as part of the interstate trip." The Prorate Table is the initial documentation that the bread products shipped from CITY, STATE are moving as part of an interstate trip to predetermined COMPANY3 store locations in Illinois and surrounding states following a brief stop at the DISTRIBUTION CENTER. The Illinois trips count as part of an interstate trip.

In the recently decided ST 13-0044 GIL ( a copy of which is enclosed, see Exhibit N), the Department reaffirms the example in ST 06-0122-GIL and further confirms a mixed load of interstate and intrastate cargo, such as the Tractors loaded with COMPANY2 bread products originating in CITY, STATE 2 (and other grocery store items) moving just between points in Illinois, qualifies as a trip in interstate commerce under the rolling stock exemption statutes. As ST 13-0044 GIL correctly concludes, a shipment of cargo with points of origin inside and outside Illinois is entirely interstate in nature for purposes of the rolling stock exemption. To evidence the interstate nature of such a move from the warehouse in City A to the destination in City B under the example in ST-06-0122 GIL, the Department states in ST 13-0044 GIL that the "carrier must maintain documentation to indicate that the journey of the shipment of property either originated or terminated outside the State of Illinois."

Under the relevant Illinois rolling stock exemption statutes, federal case law standard and ICC cases plus the informal guidance of the Department in its prior GIL's addressing requirements in the current rolling stock exemption statutes, the COMPANY Tractors satisfy the rolling stock exemption with more than 50% of total trips in interstate commerce as documented by the daily Prorate Table.

**V.**  
**RULING REQUEST**

We seek the following ruling from the Department:

Please confirm the Tractors satisfy the "use as rolling stock moving in interstate commerce" requirement under the rolling stock exemption at 35 ILCS 105/3-55(b) and 35 ILCS 105/3-61(c) and thus qualify for the rolling stock exemption because each Tractor incurs more than 50% of its total trips moving cargo with an origin or destination point outside Illinois.

We appreciate your consideration of this private letter ruling request. Please contact me with any questions regarding this matter. I look forward to hearing from you.

**DEPARTMENT'S RESPONSE:**

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope however, the following General Information Letter will be helpful in addressing your questions.

Notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce, or lessors under leases of one year or longer executed or in effect at the time of purchase to interstate carriers for hire for use as rolling stock moving in interstate commerce. 35 ILCS 120/2-5(12). In addition, notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire. 35 ILCS 120/2-5(13). See 86 Ill. Adm. Code 130.340(a).

Effective July 1, 2004, the trips or mileage of a motor vehicle for which persons or property are carried for hire just between points in Illinois may be used to qualify for the rolling stock exemption, if the journey of the passenger or shipment of the property either originates or terminates outside of Illinois. A carrier may use intrastate trips to qualify for the above-mentioned rolling stock exemption, so long as the carrier can document that the journey of the passenger or shipment of the property either originated or terminated outside the State of Illinois. See 86 Ill. Adm. Code 130.340(i).

In your letter you state that bread products are shipped from an out-of-state location to an COMPANY3 DISTRIBUTION CENTER located in CITY, Illinois. The inbound bread products are unloaded and reloaded aboard semi-trailers pulled by Tractors leased by COMPANY bound for

COMPANY3 store locations in Illinois and several surrounding states. Generally, a carrier may use intrastate trips of the nature described in your letter to qualify for the rolling stock exemption, so long as the carrier can document that the products either originated or terminated outside the State of Illinois, and the products were shipped to a location in Illinois by a carrier for hire.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.tax.illinois.gov](http://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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