

P.A. 98-628 amended the Retailers' Occupation Tax Act and the Use Tax Act to provide that with respect to first division motor vehicles and certain second division motor vehicles that are sold to a leasing company (referred to in the statute as a "lessor") for the purpose of leasing the vehicle for a defined period that is longer than one year, "selling price" means "the consideration received by the lessor pursuant to the lease contract, including amounts due at lease signing and all monthly or other regular payments charged over the term of the lease." In addition, Public Act 98-628 states that, in these cases, "selling price" also includes "any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed, including, but not limited to, excess mileage charges and charges for excess wear and tear. See 35 ILCS 120/1. (This is a GIL.)

October 20, 2015

DearXXXXX:

This letter is in response to your letter dated April 3, 2015, 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:

Pursuant to 2 Ill. Admin. Code § 1200.120, this firm requests a general information letter from the Illinois Department of Revenue (the "Department") addressing the questions and issues set forth in this letter concerning the applicability and scope of Illinois Public Act 98-628 (Act 98-628"), which, effective January 1, 2015, amended the Retailers' Occupation Tax Act and the Use Tax Act to provide for an alternate method of determining the selling price subject to tax for certain motor vehicles sold for the purpose of being leased for a

defined period that is longer than one year, as well as the Department's Information Bulletin FY 2015-03 (Dec. 2014), which explains the Department's interpretations of the changes resulting from the passage and enactment of this legislation.

Questions Regarding the Applicability and Scope of Act 98-628

1. **Availability of Refund upon Early Termination:** The tax base upon which retailers' occupation and/or use tax was paid at lease inception is overstated when a lease is terminated early. Will the Department allow a refund when a lease terminates early in the amount of tax paid on the lease payments for the cancelled portion of the lease?

2. **Tax Returns and Forms for Tax Due On Amounts Not Calculated at the Time the Lease is Executed:** It is our understanding based on Information Bulletin FY 2015-03 as well as from informal discussions with the Department that the Form LSE-1, *Tax Return for Vehicle Leasing Companies* is a monthly return used to report the total taxable receipts and the tax due for the period and Form LSE-2, *Original Lease Information* is a monthly return used to report identifying information as well as detailed tax calculation information on a vehicle-by-vehicle basis which in the aggregate should equal the amount reported on the corresponding monthly Form LSE-1. Many vehicle leasing companies have indicated that the administrative burden to comply with the Form LSE-2 reporting requirements is significant because leasing companies can have hundreds of leases subject to Form LSE-2 reporting requirements in a given month. The information required to be furnished on Form LSE-2 requires the manual input of such information (assuming the information is even available) because existing lease accounting systems do not track and maintain such information in a format that can be readily compiled to prepare the forms. We request that the Department reconsider requiring the submission of Form(s) LSE-2 and work with leasing companies in identifying a solution that will allow the Department to obtain the information that it needs while not causing an undue burden on leasing companies and may be impossible to comply.

3. **Use Tax on Vehicles Relocating into Illinois:** With respect to leases of motor vehicles that originate outside of Illinois and in which the vehicle is subsequently relocated to and titled in Illinois, we request that the Department provide guidance and/or examples on how to properly compute the tax base as well as the tax due at the time of titling the vehicle in Illinois. Under the law effective for leases of motor vehicles originated prior to January 1, 2015, the tax base is the selling price of the vehicle reduced by depreciation at the rate of 2% of the selling price per month that the vehicle was outside the state, and the resulting tax is permitted to be offset by a credit for tax paid to the other state (whether the tax paid to the other state was paid on the purchase price, total of the lease

payments or on each lease payment as the payment was due.) *See* 86 Ill. Admin. Code § 150.110; Ill. Dep't of Revenue, "Illinois Aircraft/Watercraft and Vehicle Use Tax Information Guide," Pub. No. STS-76 at 15 (rev. Nov. 2012). This law has not been amended and we request guidance on how to compute the tax base, and the use tax due, on purchases of motor vehicles for lease outside of Illinois when the tax is due at the time the vehicle is relocated into Illinois based on the alternate definition of "selling price" in Act 98-628 and reported on Form RUT-25-LSE, *Use Tax Return for Lease Transactions*. Is the tax base the same as under the prior law but merely starting with total consideration of the lease (instead of the selling price) so that the tax base is total consideration received by the lessor pursuant to the lease, less depreciation at 2% per month less credit for tax due? Alternatively, is the tax base merely the total of the remaining lease payments due under the lease? If the latter, does the Department allow a credit for tax paid if tax in the other state was paid on the full purchase price or on the total of the lease payments?

4. Determining the Tax Rate on Additional Taxable Charges for Leases Originated in Illinois: For additional charges upon which tax is due by the lessor and required to be reported on Forms LSE-1 and LSE-2 (e.g., excess wear and tear charges, excess mileage charges, and lease payments not reported on Form ST-556-LSE), the Department has provided informal guidance that the tax rate to be used is the tax rate in effect at the dealer location at the time of lease inception (or, in the case of a lease that originated outside Illinois, the rate applied when the vehicle was first titled in Illinois). However, almost all lease accounting systems utilized by motor vehicle leasing companies maintain and store account information based on the lessee garaging address and not the dealer location. Although the leasing company may retain a copy of Form ST-556-LSE in its records, many leases could be impacted each month and determining the original tax rate would be a manual process with which leasing companies could not practically implement. However, if the tax rate on the additional charges is the tax rate of the garaging location of the vehicle at the time the additional charges are incurred, or if the Department were to maintain a database to assist in identifying the originating dealer tax rate by vehicle identification number, then it may be feasible for leasing companies to determine the appropriate tax rate on additional taxable charges. Otherwise, leasing companies may be forced to resort to an alternative method that would be time consuming and impractical for the leasing company and the Department upon audit. In light of this enormous burden placed on motor vehicle leasing companies to obtain the original rate, we request that the Department reconsider its position regarding the applicable tax rate of the additional taxable charges or work with leasing companies to identify a feasible solution with which leasing companies may reasonably comply.

5. Use Tax on Vehicles Leased at a Dealer with a Tax Rate Lower Than That Where the Vehicle is Garaged: With respect to additional charges

upon which tax is due by the lessor and reported on Forms LSE-1 and LSE-2 (e.g., excess wear and tear charges, excess mileage charges, and lease payments not reported on Form ST-556-LSE), the Department has provided informal guidance that the tax rate to be applied is the tax rate in effect at the dealer location at the time of lease inception (or, in the case of a lease that originated outside Illinois, the rate applied when the vehicle was first titled in Illinois). Our understanding is that when a vehicle purchased from an Illinois dealer is garaged at a location with a local use tax rate that is greater than the dealer's local retailers' occupation tax rate, the titled owner (i.e., the motor vehicle leasing company) receives a bill for any additional use tax due on the amounts paid to the dealer. We request guidance on whether the additional lease charges that will be paid to the lessor and subject to tax at the rate of the dealer location (if originated in Illinois) will also be subject to any additional local use tax under these circumstances. If so, will a bill be sent for any additional local tax in a similar fashion to what occurs with respect to the tax due at lease inception, or is the lessor required to remit the additional tax?

6. Determining the Applicable Tax Rate on Additional Taxable Charges for Relocated Leases: With respect to leases that are originated outside Illinois where the leased vehicle is later relocated into Illinois, use tax due is paid at the time the vehicle is titled in Illinois. Since the lessee titles the vehicle on behalf of the lessor, for leases originated prior to January 1, 2015 the lease customer completes and submits Form RUT-25, *Vehicle Use Tax Transaction Return* at the time of titling on behalf of the lessor. The lessor generally does not receive a copy of this form. For leases originated on or after January 1, 2015, the lease customer will complete and submit Form RUT-25-LSE, *Use Tax Return for Lease Transactions* at the time of titling on behalf of the lessor and the lessor will similarly not receive a copy of the form. However, for these leases that are subject to the alternate definition of selling price, the lessor is responsible for remitting tax on additional charges at the rate listed on the submitted Form RUT-25-LSE. For such leases, will the Department or the Illinois Secretary of State develop and provide motor vehicle leasing companies with access to a database that will allow the lessor to obtain the applicable tax rate (as well as the Form RUT-25-LSE return number that may be required to be listed on a corresponding Form LSE-2)? Or must the lessor instead bear the burden and expense of obtaining a copy of the Form RUT-25-LSE from the Department in order to determine the applicable rate?

7. Lease Assignment Fees: Many motor vehicle leasing companies allow lessees, subject to approval of the leasing company, to assign all rights and obligations under the lease to an assignee that steps in the shoes of the original lessee. Generally, such an assignment does not change the lease payments or any other amounts due under the lease; however, leasing companies generally impose a "transfer fee" or "assignment fee" to cover administrative costs associated with

the assignment. Are such lease transfer or assignment fees subject to retailers' occupation tax or use tax? If these are taxable, is the leasing company required to remit the tax at the time of such assignment and at the rate imposed at lease inception?

8. **Taxability of Negative Equity:** Negative equity exists in motor vehicle lease transactions where the lessee trades in a vehicle that is subject to encumbrance(s) where such encumbrance(s) exceeds the value of the vehicle. The amount representing negative equity is equal to the amount that the dealer will have to pay the finance company to satisfy the debt owing less the value of the vehicle. This negative equity amount is often capitalized into the lease so that the customer has the ability to pay off the excess prior loan amount as part of the periodic rent payments over the term of the lease. The effect of capitalizing the negative equity amount into the lease is to increase the lease payment amount. However, the negative equity amount is not an amount charged by the lessor for the use of the vehicle currently leased by the lessee. Instead, this amount exclusively reflects an amount paid by the lessor to a third party representing the balance outstanding on the prior vehicle which was previously subject to tax. Does the Department intend to impose retailers' occupation tax and/or use tax on negative equity amounts capitalized into lease payments? If not, would the Department compute the tax by allowing a reduction to the amount due at signing equal to the amount of the negative equity that is added to the capitalized cost in computing the lease payments?

9. **Taxability of Service Contracts and Other Ancillary Products Sold at Lease Inception and Either Capitalized in the Lease or Financed/Paid Separately:** Most service contracts, tire and wheel protection contracts, LoJack or other GPS theft protection and recovery contracts, and other ancillary products that are offered by the dealer to the lease customer at the time of lease inception are capitalized in the lease and become part of the amount periodic lease payments. Amounts charged for these contracts (that would not otherwise be taxable under 86 Ill. Admin. Code § 140.141 if separately stated from the selling price of tangible personal property) would be subject to retailers' occupation tax or use tax as part of the tax on the lease payments. However, are charges for these products not taxable if they are paid in full by the lease customer (or financed separately from the lease of the vehicle and not included in the lease payments) at the time of the sale of such products despite that such products are sold at the same time as and in conjunction with the vehicle that is being leased?

10. **Availability of Trade Credits and Advance Trade Credits:** Under Act 98-628, the definitions of "selling price" in 35 ILCS § 120/1 and 35 ILCS § 105/2 were amended to provide as follows and in relevant part:

The “selling price” of a motor vehicle that is sold on or after January 1, 2015 for the purpose of leasing for a defined period of longer than one year shall not be reduced by the value of or credit given for a traded-in tangible personal property owned by the lessor, nor shall it be reduced by the value of or credit given for traded-in personal property owned by the lessee, regardless of whether the trade-in value thereof is assigned by the lessee to the lessor.

In Information Bulletin FY 2015-03, the Department takes the position this provision does not allow trade credits for only those vehicles sold on or after January 1, 2015 for the purpose of leasing for a defined period of longer than one year which are subject to retailers’ occupation tax or use tax on the amount due at lease signing, plus the total amount of payments over the lease term. If the taxable selling price for the lease transaction continues to be the actual selling price of the item (e.g., for trucks, pick-up trucks with a gross vehicle weight rating (“GVWR”) exceeding 8,000 pounds, commercial vans and vehicles designed to carry more than 16 passengers, commercial vans designed to carry more than 10 persons with a GVWR exceeding 8,000 pounds, and self-propelled construction equipment), the lessor may claim credit for a qualified trade-in on Line 2 on Form ST-556-LSE.

However, the statutory language excerpted strongly suggests that the trade credits are not available to offset the selling price of any motor vehicles sold for the purpose of leasing for a defined period of longer than one year. The text of the provision, taken by itself, is not limited in effect to those leases for more than one year subject to the alternate definition of selling price. Moreover, if a vehicle is sold for the purpose of leasing for one year or less such vehicle is subject to automobile renting occupation or use taxes and not to retailers’ occupation or use taxes pursuant to 35 ILCS § 120/2-5(5) and 86 Ill. Admin. Code § 130.120(w). Therefore, based on a close reading of the statutory language, even sales of vehicles that do not meet the specifications to be subject to the alternate definition of selling price would be ineligible for trade credits so long as the sale of the vehicle was for the purposes of leasing for a defined period of longer than one year.

Consequently, we request that the Department confirm our understanding that if the tax base of a given motor vehicle is its actual selling price the Department is continuing to allow a trade credit for such vehicle. We also request that the Department confirm our understanding that the trade credit line on Form ST-556-LSE is not to be used for sales where the tax base is the alternate definition of selling price and that the trade credit is taxed on sales of vehicles subject to the alternate definition of selling price by including the amount of trade credit in the

amount due at signing that is subject to tax (since the capitalized cost is reduced by the trade credit in computing the lease payments).

11. **Taxability of Deficiency and Surplus Amounts from TRAC Leases:** Terminal rental adjustment clause (“TRAC”) leases are true leases as characterized by the Internal Revenue Service that provide for a residual guarantee by the lessee by “requiring the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of the property.” 26 U.S.C. §§ 7701(h)(1), (h)(3). Consequently, when the off-lease vehicle is sold, to the extent that the sales proceeds exceed the agreed upon residual value (surplus), the lessee is entitled to the excess proceeds. In contrast, to the extent that the sales proceeds are less than the residual value (deficiency), the lessee is required to pay the lessor the difference. These deficiency and surplus adjustments are treated differently by state taxing authorities. To the extent a TRAC lease originated on or after January 1, 2015 is a lease of a qualifying motor vehicle that will cause the tax to be due upfront on the total lease amount as opposed to the actual selling price, does the Department consider a resulting deficiency amount to be unrelated to the lease since it occurs after the lease has terminated and the vehicle has been returned to the lessor or does the Department consider the deficiency to be additional rent paid to the lessor and therefore subject to tax? Conversely, does the Department consider a resulting surplus amount to be an adjustment to the lease price and therefore allow a credit for tax that was paid on the originally overstated lease price? Or does the Department consider a surplus amount to be an amount unrelated to the lease since it occurs after the lease has terminated and the vehicle has been returned to the lessor, and therefore allow no reduction of tax for the surplus returned to the customer?

12. **Sale of Leased Vehicle and Assignment of Lease to Another Lessor:** Motor vehicle leasing companies often sell portfolios of leases to other leasing companies, which entails the sale of the leased vehicles in such portfolios and assignment of the rights and obligations under the leases to the purchaser. There is no resale exemption available for such sales since the sale of a vehicle between leasing companies is deemed a retail sale for retailers’ occupation tax and use tax purposes. Under the preexisting definition of selling price, in many cases the credit for tax paid at lease inception was claimed against the tax due on the sale/purchase so that no additional tax was due on the transaction. For leases subject to the alternate definition of selling price under Act 98-628, is there any relief for tax on these transactions (which when passed through to the lessee feels like double taxation) in light of the fact that the credit for tax paid is not available?

13. **Exemption for Leases Originated at an Illinois Dealership by a Nonresident of Illinois:** The Department’s “Reciprocal – Non-Reciprocal

Vehicle Tax Rate Chart,” Pub. No. ST-58 (rev. Jan. 2015) provides that motor vehicle leases originated from an Illinois dealership to nonresidents using drive-away permits or transferring out-of-state vehicle registration plates are exempt from retailers’ occupation tax, regardless of the lessee’s state of residence. To claim this exemption, the dealer will claim the out-of-state buyer exemption and would file Form ST-556-LSE with no tax due. The dealer will need to provide the lessor’s and lessee’s information in Sections 1 and 2 of Form ST-556-LSE and check and complete Section 6, Box E. The lessor will complete Form ST-588, *Nonresidency Exemption Certification for Sales and Leases of Motor Vehicles and Trailers*. Is the Department’s position that all receipts from leases originated at an Illinois dealership by a nonresident of Illinois are exempt from retailers’ occupation tax, including any amounts received by the Illinois dealer at the time of lease origination?

14. **Method of Remitting Tax Due on Lease Extension Payments:** Information [sic] Bulletin FY 2015-03 explains that all additional charges for retaining possession of a leased motor vehicle beyond the term of the lease are subject to retailers’ occupation tax or use tax. Is such tax due on lease extension payments at the time each payment is received by the lessor or is the tax due on the total amount of the lease payments under the extension at the time of the extension?

15. **Clarification of Taxable Additional Charges:** Information [sic] Bulletin FY 2015-03 lists the additional charges subject to retailers' occupation tax or use tax as excess wear and tear charges, excess mileage charges and lease payments not reported on the original return (e.g., lease extension charges and fees). Is this an exclusive list of all charges not imposed at lease origination that are subject to tax? If not, would the Department please indicate whether the following charges are subject to tax?

Inception Charges

- Acquisition Fees
- Document Preparation Fees
- Title, License, and Registration Fees

Ancillary Products (See Question No.9)

- Service Contracts
- Guaranteed Auto Protection (GAP) and Debt Waiver
- Excess Mileage Contract
- Wheel and Tire Protection
- Liability Insurance
- Credit Life Insurance
- Disability Insurance
- Dealer Approved Installed Equipment

Administrative Charges

- Condition Report Fees
- Annual Tax Letter Fees
- Reinstatement Fees
- Financing Fees

Taxes

- Federal Excise Tax (if capitalized or separately stated)

Fines

- Late Payment Fees
- Bad Check Fees
- Administrative Fees for Traffic Tickets and Fines

Transfer and Extension Charges

- Transfer of Interest Fees (See Question No. 7)
- Application Fees Related to Transfers of Interest
- Due Date Change Fees
- Over Term Fees
- Extension and Renewal Fees
- Contract Modification Fees

Termination Charges

- Early Termination Fees
- Disposition Fees
- Payoff Fees
- Default Fees
 - Repossession Fees
 - Storage Fees (pending auction)
 - Transportation Fees (to auction)
 - Auction Fees
 - Legal Fees (in connection with repossession/auction)
- Deficiency Fees
- TRAC Adjustment Payment Due From Lessee (See Question No. 11)

We respectfully request a conference to discuss the issues contained in this letter before any written response is rendered.

Thank you for your kind consideration of this matter. If the Department would like to discuss the contents of this letter or requires additional information, please contact me.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

Retailers' Occupation Tax is measured by gross receipts from the sale of tangible personal property to end-users. See 35 ILCS 120/2-10. "Gross receipts" is defined as "the total selling price or the amount of such sales." See 35 ILCS 120/1. Use Tax is imposed on "the selling price . . . of the tangible personal property." See 35 ILCS 105/3-10. Before January 1, 2015, "selling price" was defined as "the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever." See 35 ILCS 120/1 and 35 ILCS 105/2. Beginning on January 1, 2015, Public Act 98-628 added language to the definition of "selling price" to provide that, only with respect to first division motor vehicles and certain second division motor vehicles that are sold to a leasing company (referred to in the statute as a "lessor") for the purpose of leasing the vehicle for a defined period that is longer than one year, "selling price" means "the consideration received by the lessor pursuant to the lease contract, including amounts due at lease signing and all monthly or other regular payments charged over the term of the lease." In addition, Public Act 98-628 states that, in these cases, "selling price" also includes "any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed, including, but not limited to, excess mileage charges and charges for excess wear and tear." See 35 ILCS 120/1 and 35 ILCS 105/2.

For the tax collected at the time the vehicle is sold and the lease is executed, Public Act 98-628 does not change who the Retailers' Occupation Tax or the Use Tax is imposed upon (Retailers' Occupation Tax on sellers and Use Tax on purchasers (lessors)) or that the tax is measured by the selling price. Public Act 98-628 does change how the selling price is determined for sales to leasing companies of motor vehicles that meet the statutory criteria. For sales

meeting the statutory criteria, selling price is measured by the amount to be paid under the terms of the lease contract, plus certain additional amounts collected by the lessor that are not calculated at the time the lease is executed, rather than by the consideration received for the sale.

With that background, we will address the questions in the order you have asked them.

1. Availability of Refund upon Early Termination: No. The Department will not allow a refund in the situation described. The tax is imposed on the sale of the vehicle to the leasing company, not the lease itself. P.A. 98-628 does not impose a lease tax in Illinois. The tax remains the same (Retailers' Occupation Tax and corresponding Use Tax when the vehicle is sold to the leasing company). What P.A. 98-628 did change is the "selling price" on which the tax is measured for qualifying vehicles under qualifying leases. Selling price in these situations is now based on the lease contract rather than the actual price paid by the leasing company to the automobile dealer. Therefore, any change related to the lease contract after the sale does not impact the tax that was paid based on the sale.

2. Tax Returns and Forms for Tax Due On Amounts Not Calculated at the Time the Lease is Executed: P.A. 98-628 requires leasing companies to electronically file the LSE-1 return and electronically pay the tax owed under this provision. The LSE-2 will be used to report the receipts for a given vehicle and, as you indicate, this information will feed into the LSE-1 return. The online filing system offered for free by the Department will populate all of the relevant information from the previously filed ST-556-LSE or RUT-25-LSE for that vehicle once you enter the original return number or the vehicle's Vehicle Identification Number ("VIN"). We hope this will allay the leasing companies' concerns.

3. Tax on Vehicles Relocating into Illinois: The law has not changed with respect to reporting and paying tax on vehicles originally purchased and registered outside of Illinois and later registered in Illinois, with the exception of the impact of the change under P.A. 98-628 in the definition of "selling price" for qualifying vehicles leased for qualifying terms. Therefore, all of the same procedures apply, with the exception that the "selling price" for these qualifying vehicles would be based on the lease contract rather than the actual selling price.

4. Determining the Tax Rate on Additional Taxable Charges for Leases Originated in Illinois: The Department has programmed the electronic returns such that when the leasing company enters either the original return number from the ST-556-LSE or RUT-25-LSE for the vehicle or the vehicle's VIN number, the location and rate information from the original return will be made available to populate the LSE-2 Form. This will avoid the leasing company having to manually enter this information.

5. Use Tax on Vehicles Leased at a Dealer with a Tax Rate Lower Than That Where the Vehicle is Garaged: For tax collected by the Illinois Department of Revenue, including local use taxes collected by the Department, the rate on the LSE-2 that the electronic filing system will allow you to bring in from the originally filed ST-556-LSE or RUT-25-LSE will include those local taxes. For local use taxes that are not collected by the Illinois

Department of Revenue, you will need to contact the local jurisdictions to determine how they plan to administer the collection of any additional local use taxes owed for these additional amounts received by the leasing companies.

6. Determining the Applicable Tax Rate on Additional Taxable Charges for Relocated Leases: When filing the LSE-2, the original return information will be used by the system to populate the LSE-2 if you enter either the original ST-556-LSE or RUT-25-LSE return number or the VIN of the vehicle. Although we would encourage you to obtain from your customer and keep a copy of your return on file, even without the return, the system can retrieve the relevant return information with the VIN.

7. Lease Assignment Fees: Lease assignment fees and transfer fees are not subject to Retailers' Occupation Tax or Use Tax.

8. Taxability of Negative Equity: To the extent that negative equity is included as part of the lease contract, it becomes part of the "selling price" subject to tax per P.A. 98-628. The statute says that selling price "means the consideration received by the lessor pursuant to the lease contract." (See 35 ILCS 120/1) Since selling price is now determined by a proxy (the lease contract) rather than the actual amount the leasing company pays to the automobile dealership to purchase the car, whatever amounts are included in the lease contract become part of the "selling price" under the Public Act.

9. Taxability of Service Contracts and Other Ancillary Products Sold at Lease Inception and Either Capitalized in the Lease or Financed/Paid Separately: The tax imposed on the sale of a qualifying motor vehicle for a qualifying lease is based on the amount due under the lease contract per P.A. 98-628. As a result, if an item or a service is purchased at the same time as a customer leases a qualifying vehicle, but is not included as part of the lease contract, then the amount paid for that item or service is not considered part of the taxable selling price for the vehicle. The tax, if any, on those separate purchases would be determined as with any other transaction for the purchase of a service or tangible personal property. If, however, that item or service is included as part of the lease contract, then it would become part of the "selling price" on which tax is measured under P.A. 98-628.

10. Availability of Trade Credits and Advance Trade Credits: We agree that if the sale of a motor vehicle for lease does not meet the conditions set forth in P.A. 98-628 to use the alternate selling price, and that, therefore, the price paid by the leasing company to the automobile dealership to purchase the vehicle is the taxable selling price, then a trade-in credit may be taken for a qualifying trade-in on that transaction. As the Department has stated in Informational Bulletin FY 2015-03, the elimination of the trade in credit only applies in those situations where the alternate selling price of P.A. 98-628 is used. This trade-in credit elimination provision is embedded in a discrete and coherent paragraph defining "selling price" differently for transactions in which qualifying motor vehicles are sold for the purpose of being leased for a defined period of more than one year. In that context the elimination of the trade-in credit applies only to those vehicles that qualify for the alternate selling price under P.A. 98-628.

11. Taxability of Deficiency and Surplus Amounts from TRAC Leases: The Department does not have enough information to answer this question fully. We would remind you that the alternate selling price under P.A. 98-628 is only allowed for leases with a defined period and for motor vehicles of the first division and certain motor vehicles of the second division. As a result, the alternate selling price would not apply to open-end leases (i.e. leases with a defined initial period with the option to continue the lease on a month-to-month or other basis). Our understanding is that TRAC leases are typically employed for leases of over-the-road vehicles (cars, trucks and trailers) used at least 50% in the trade or business of the lessee. Our understanding is that these leases are also typically leases with an initial fixed term with an option to continue the lease on a month-to-month or other basis. As a result, it appears unlikely that a vehicle leased under a TRAC lease would be eligible for the alternate selling price under P.A. 98-628.

12. Sale of Leased Vehicle and Assignment of Lease to Another Lessor: The Department does not have enough information to answer this question.

13. Exemption for Leases Originated at an Illinois Dealership by a Nonresident of Illinois: The transaction you describe would be exempt from Illinois Retailers' Occupation Tax and Use Tax. Please see letter ruling ST 05-0019-GIL for more information.

14. Method of Remitting Tax Due on Lease Extension Payments: P.A. 98-628 provides that "For amounts received by the lessor from the lessee that are not calculated at the time the lease is executed, the lessor must file the return and pay the tax to the Department by the due date otherwise required by this Act for returns other than transaction returns." See 35 ILCS 120/1. These receipts are due by the 20th of the month following the month in which each lease extension payment is received.

15. Clarification of Taxable Additional Charges: P.A. 98-628 provides that the selling price of a qualifying motor vehicle that is sold for the purpose of leasing it for a defined period also includes "any amount received by the lessor from the lessee for the leased vehicle that is not calculated at the time the lease is executed." See 35 ILCS 120/1. This is in addition to any amount included in the lease contract, which is taxed at lease inception.

To the extent any items in the list here are items charged at lease inception, they are considered part of the "selling price" only to the extent that they are included in the lease contract itself (i.e. those items listed as Inception Charges, Ancillary Products, and Taxes). For amounts received by the leasing company after lease inception, the "selling price" only includes those amounts that are "for the leased vehicle." The statute specifically names excess mileage charges and charges for excess wear and tear. In addition, "selling price" includes any additional lease payment that was not specifically included in the original lease contract (e. g. lease extension payments).

While the purpose for many fees you listed seems clear, for some, it does not. The general rule is that, to the extent that charges are for administrative or other purposes and are not charges “for the leased vehicle” (such as Early Termination Fees and Default Fees, which are not charges “for the leased vehicle”), they are not part of the selling price of the vehicle on which tax is measured.

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,

Samuel J. Moore
Associate Counsel

SJM:mdb