

ST 15-0061-GIL MOTOR VEHICLES

Lessors of motor vehicles for a term of more than one year in Illinois are deemed end users of the property to be leased. As end users of the property located in Illinois, lessors owe Use Tax on the selling price of such property. See 86 Ill. Adm. Code 130.220. (This is a GIL.)

October 23, 2015

DearXXXX:

This letter is in response to your letter dated August 25, 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:

In January 2014, my wife NAME leased a vehicle from a ABC dealership in Illinois. As part of the lease agreement, we are obligated to reimburse ABC for all taxes paid by ABC. At the initiation of the lease, ABC paid the State of Illinois the full amount of sales tax on the vehicle. In turn, ABC bills my wife a pro-rated portion of the sales tax on her monthly lease. The term of the lease is 39 months.

Earlier this year, my wife and I moved to STATE, and according to STATE law we are required to register the vehicle with the state. Doing so triggers a “Transaction Privilege Tax,” which is STATE’s equivalent to the Illinois Sales Tax. STATE does not provide any credit for taxes paid to Illinois. If we follow STATE law and register the vehicle in STATE, ABC will be assessed Transaction Privilege Tax and in turn will raise our monthly lease payment to reimburse for the taxes paid.

Therefore, our lease payment to ABC will include reimbursement for taxes paid to both Illinois and STATE. ABC contends that there is no solution to the problem and that we must reimburse them for sales tax paid to two states. Obviously, I find it unfair as we are being taxed twice for the same transaction.

I am asking for your help to identify a solution to this double tax issue. At a minimum, I have two questions regarding Illinois taxes:

- Given that ABC was required to pay Illinois all sales tax at the initiation of the lease, may ABC request a refund on the sales taxes given that we moved out of Illinois before the end of the vehicle lease?
- If ABC terminated the lease early, would they be able to re-file the sales taxes on this vehicle and request a refund?

I would appreciate any help that you can provide. If you need to contact me directly, my phone number is (312) 343-1813.

DEPARTMENT'S RESPONSE:

The Illinois 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. In Illinois, 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.

With respect to leases, however, it is important to understand that the State of Illinois does not impose a tax on the lease of a motor vehicle for a term of more than one year (the lease or rental of an automobile for a term of one year or less, however, is subject to the Automobile Renting Occupation and Use Tax. See 35 ILCS 155/1 et seq. and 86 Ill. Adm. Code 180.101). Consequently, with respect to Department-administered taxes, lessees of motor vehicles for a term of more than one year incur no tax liability. Lessors of motor vehicles for a term of more than one year in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of the property located in Illinois, lessors owe Use Tax on the selling price of such property. However, it is typical of such leases to contain contractual provisions stating that the lessees will *reimburse* the lessors for their tax costs. This is not a matter of Illinois tax law but of a private agreement between lessors and lessees. If the lessee agrees to such provisions, he or she is bound to satisfy that duty because of a contractual agreement, not because of Illinois tax law.

The Retailers' Occupation Tax does not allow a refund of tax paid on the purchase of a motor vehicle by a leasing company because the lessee moves out of Illinois before the end of the lease term or because the lease contract is terminated early. The tax is imposed on the sale of

the vehicle to the leasing company, not on the lease transaction. Therefore, any change related to the titling or registration of the vehicle after the sale or resulting from a lease termination after the sale does not impact the tax that was paid based on the original sale of the vehicle to the leasing company.

While STATE law governs the registration of vehicles in STATE, we will note that in the reverse situation, where a lessee moves into Illinois during the term of a vehicle lease that exceeds one year with a vehicle he or she originally leased and registered in another state, Illinois law allows for a credit for tax that was properly due and paid in that other state against the Use Tax owed in Illinois. See 86 Ill. Adm. Code 150.310(a)(3). To the extent that any state other than Illinois does not allow such a credit, this is an issue that you must take up with that state.

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