

ST 16-0003-GIL 01/07/2016 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 7, 2016

Dear Xxxxx:

This letter is in response to your letter dated November 4, 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:

As we discussed, this letter is to request a written ruling from your department regarding the Illinois Retailers Occupation Tax associated with the facts and circumstances described below:

FACTS:

Taxpayer ("Company T") leases computer equipment (e.g., laptops) and audio visual equipment on a short term basis (i.e., typically seven days or less) from a vendor ("Vendor") and subsequently re-leases the equipment to its customers ("Customers") also on a short term basis of seven days or less. Company T leases the equipment to its Customers as part of a service to provide Customers with equipment for various business meetings such as marketing events. Company T does not purchase the equipment from its Vendor.

ISSUES:

Does Company T owe sales/and or use tax when it leases the equipment from it's Vendor? Also, is the re-lease by Company T to it's Customers subject to sales tax?

Analysis:

Illinois Administrative Code 86 Section 130.2010 provides that lessors who rent or lease tangible personal property under bona fide agreements, are not in the business of selling tangible personal property and are therefore not subject to sales tax. However, the lessor is considered to be a user of the property and is subject to the Illinois use tax when purchasing tangible personal property that they lease or rent to others. Thus, Vendor may be subject to Illinois use tax if it purchases the equipment from it's supplier. Company T would not be subject to Illinois use tax since it does not purchase the equipment from it's Vendor but instead leases the equipment for re-lease to Customers. The use tax does not apply when Company T leases the equipment to it's Customers. In addition, the lease from Company T to Customers is not considered a taxable service subject to Illinois sales tax.

Based on the above facts and circumstances and analysis, please provide written verification that our conclusions regarding the appropriate sales and use tax (i.e., the Retailer Occupation Tax) treatment is correct and that Company T does not owe sales and use tax when it leases equipment from Vendor, nor does it need to collect sales tax on it's re-leases to Customers.

If you have any questions or require further information, please contact me at (XXX) XXX-XXXX. Your attention to this matter is greatly appreciated.

DEPARTMENT'S RESPONSE:

Please note that 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 lessors are 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, thus making all receipts 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. 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. See 86 Ill. Adm. Code 130.2010. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If a lessee re-leases property, he may make similar contractual arrangements with another party, but as a technical matter, the true incidence of the tax in Illinois leasing transactions is placed on the original lessor.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois are the parties with Use Tax obligations. The lessors should either pay their suppliers, if their suppliers are registered to collect Use Tax, or self-assess and remit the tax to the Department. If the lessors have already paid tax in another state with respect to the acquisition of the tangible personal property, they are exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See 86 Ill. Adm. Code 150.310(a)(3).

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,

Cara Bishop
Associate Counsel

CB:bkl