

ST 16-0012-GIL 03/15/2016 LEASING

Information regarding the 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.)

March 15, 2016

Dear Xxxxx,

This letter is in response to your letter dated November 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:

ABC, a CITY 1, STATE 1 corporation is seeking a private letter ruling on sales tax payments. ABC is a fixed asset based company that rents semi-trailers to businesses, and operates in various geographic locations throughout the United States with an established corporate office in STATE 1. We recently contracted a deal with a customer that will be taking delivery of numerous semi-trailers in COUNTY 1, Illinois.

We are collecting revenue from a singular business which will operate the semi-trailers in Illinois and the customer does not have an exemption status. Since a nominal purchase option is not available at the close of the period, a conditional sale does not apply in regards to the application of nexus and potential sales and use tax due. In addition, the rent payments of the semi-trailers will take place on a month to month basis and it is unclear if the customer will rent the trailers for longer than one year. All trailers are tagged and titled in STATE 2 or STATE 3.

ABC does not have a physical location in Illinois. In addition, ABC does not have any employees in the State of Illinois nor does it have any salespersons soliciting or entering the state of Illinois.

In referencing Illinois Code sections: 130.2010, 190.125, 150.801, and 130.140, it is unclear if the situation; described in Paragraph 1, establishes a nexus scenario that would require ABC to collect and remit sales and use tax. ABC is seeking a ruling which states nexus is not established since there is no clear statement in the code

which refers to the rental of semi-trailers in Illinois which are tagged outside of Illinois as a taxable transaction without the presence of employees and without the presence of a physical location in Illinois.

We have attached a copy of our contract for your reference in determining this matter. We look forward to a timely response.

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.

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, that 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 of a true lease 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. 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 allowed a credit against Use Tax to the extent of the amount of the tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310(a)(3).

Assuming the leases of the semi-trailers are true leases, as the lessor of the semi-trailers, you are responsible for paying Use Tax to the State of Illinois on your cost price of the trailers when they are brought into Illinois. As noted above, if you have already paid taxes in another state with respect to the acquisition of the semi-trailers, the Department allows a credit against Use Tax for taxes properly due and paid in the other state.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:bkl