

ST 16-0013-GIL 03/15/2016 AUTOMOBILE RENTING TAX

Persons who are engaged in the business of renting automobiles in Illinois under rental terms of one year or less are subject to the Automobile Renting Occupation and Use Tax set forth at 35 ILCS 155/1 et seq. See 86 Ill. Adm. Code 180.101. (This is a GIL).

March 15, 2016

Dear Xxxxx:

This letter is in response to your letter dated January 19, 2016, 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](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:

I am writing on behalf of the COMPANY and its subsidiaries (collectively the “COMPANY”) to request an informal written opinion with respect to the applicability of sales, gross receipts, motor vehicle rental and/or other transaction taxes, as appropriate, that your state may impose on transactions detailed below.

COMPANY, under its own name and the ABC, DEF and GHI brands, provides short-term motor vehicle rentals to business, leisure and insurance/warranty replacement customers. COMPANY owns and operates various on and off-airport locations throughout the United States, including the State of IL.

Motor vehicle “rental charges” consist of charges for time; mileage; fuel; ancillaries such as liability waivers; personal accident insurance and navigation systems; and the amounts for taxes, fees and cost recoveries. COMPANY, like its competitors, normally collects payment in satisfaction of rental charges at the time the rental is returned, although in certain instances time and mileage charges are collected in advance. COMPANY is considering offering its customers additional payment options, to include partial and full payment-in-advance of the actual rental, that is, payment is collected before the customer takes possession of the vehicle. Accordingly, guidance is sought with respect to the taxability of these options, specifically:

1. Customer pays a refundable or non-refundable reservation fee. COMPANY collects reservation fee at the time the reservation is made, in advance of the actual rental. The reservation fee, which will vary in amount but at all times will be less than the total anticipated cost of the actual rental, will be applied towards the total rental charges upon completion of the rental. Is this fee subject to tax and if so, at what time should tax be remitted? Should tax be remitted at time fee is collected or when actual rental takes place?
2. Same as 1, above, only the customer does not appear at the anticipated time of rental reservation (no show) and forfeits the non-refundable reservation fee. Is this fee subject to tax?
3. COMPANY collects refundable or non-refundable payment for *entire rental* in advance. COMPANY collects payment, to include all charges for time, mileage, ancillaries, taxes and fees, etc., at time reservation is made. Assuming the customer does not alter the anticipated terms, this payment is in full satisfaction of all rental charges. We assume that these charges are taxable in a manner consistent with any traditional rental scenario; however, does the timing of the tax payment change in this instance? Simply, are taxes and fees due at the time payment is collected or the time the actual rental transaction takes place?
4. Same as 3, above, only the customer does not appear at reserved time of rental and forfeits entire non-refundable rental charge. Is this charge subject to tax or is it treated as a reservation fee (no show) similar to question 2 above? Alternatively, does some other treatment apply?

In all instances above where tax is applicable, I ask that you please indicate specifically which tax, or taxes, apply.

If you have any questions, or require any additional information, please contact me via email at XXX or telephone at XXX.XXX.XXXX.

Thank you for your time and attention to this matter and I look forward to your response.

#### **DEPARTMENT'S RESPONSE:**

Persons who are engaged in the business of renting automobiles in Illinois under rental terms of one year or less are subject to the Automobile Renting Occupation and Use Tax. 35 ILCS 155/1 *et seq.* See 86 Ill. Adm. Code 180.101. This tax is imposed at the rate of 5% of the gross receipts from such business. "Gross receipts" means all consideration received by a rentor as the rental price for the rental of automobiles under lease terms of one year or less. Where a rentor receives the rental price in installment payments, the rentor shall include the amounts of such payments only as and when the payments are received by the rentor. 86 Ill. Adm. Code 180.120(a). Certain separately stated charges, though, are not subject to tax and are listed in Section 180.125 of the Department's regulations.

“Renting” means any transfer of the possession or the right to possession of an automobile to a user for valuable consideration. 35 ILCS 155/2. A non-refundable reservation fee is taxable because the rentee is irrevocably liable to pay the fee for the right to possess the automobile. The tax applies at the time of the receipt of the non-refundable reservation fee. If additional receipts are subsequently received for the rental of the automobile the tax is imposed at the time the receipts are received.

Generally, a refundable reservation fee is not taxable if the fee is returned to the customer in the event the customer does not rent the automobile. At the time the customer becomes irrevocably liable to pay the fee for the right to possess the automobile the tax on the reservation fee would apply.

The same analysis applies whether the company collects a refundable or non-refundable payment for the entire rental. Please note that certain separately stated charges are not subject to tax. See 86 Ill. Adm. Code 180.125.

I hope this information is helpful. If you require additional information, 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

RSW:bkl