

If persons who are engaged in the business of selling tangible personal property to purchasers for use or consumption purport to rent or lease the use of any such property to a nominal lessee or bailee, but in fact sell such tangible personal property to the nominal lessee or bailee for use or consumption, all of the receipts received by the lessor/retailer under such a conditional sales contract are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010. (This is a GIL).

October 3, 2016

RE: Letter Ruling on Leases of Tangible Personal Property

Dear Xxxxx:

This letter is in response to your letter dated March 30, 2016, in which you requested 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:

COMPANY is a third party servicing company. COMPANY's clients are in the business of leasing tangible personal property. Associated with the leased equipment are non-taxable items such as freight, installation, document fees, etc.

COMPANY's clients use a standard lease agreement where the lessee pays a term of payments and has the option to purchase the equipment at the end of the lease. Each term payment is invoiced as a single payment amount, not broken down by underlying assets. However, records are kept that break down the cost of the equipment between taxable and non-taxable amounts. Attached is an example for your reference. This is not provided to the invoiced lessee.

Please provide a Letter Ruling on the following:

- For lease transactions with a nominal purchase option (CSA) and the tax is collected on the monthly payment, when the lease payment is invoiced as a single amount, can the applicable sales/use tax be calculated only on the portion

of the payment that is for taxable items if records are kept by the lessor showing the breakdown of the taxable and non-taxable assets?

OR

- Is the applicable sales/use tax calculated on the entire lease payment (lease payment x applicable tax rate)?

If you have any questions or need additional information to respond to this request, please feel free to contact me at the email address or phone number provided.

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 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.

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 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).

If persons who are engaged in the business of selling tangible personal property to purchasers for use or consumption purport to rent or lease the use of any such property to a nominal lessee or bailee, but in fact sell such tangible personal property to the nominal lessee or bailee for use or consumption, such persons are liable for payment of the Retailers' Occupation Tax. This is the case,

for example, when the transaction involves a lease with a dollar or other nominal option to purchase. 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, and all of the receipts received by the lessor/retailer under a conditional sales contract are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010.

Please note that separately stating the price of items which are not tangible personal property either on books and records or the invoice is generally insufficient to exclude those items from the taxable base. Where the seller engages in the business of selling tangible personal property at retail, and such tangible personal property is installed or altered for the purchaser by the seller (or some other special service is performed for the purchaser by the seller with respect to such property), the gross receipts of the seller on account of his charges for such installation, alteration or other special service must be included in the receipts by which his Retailers' Occupation Tax liability is measured, if such installation, alteration or other special service charges are included in the selling price of the tangible personal property which is sold. This is true whether the charge for the property which is sold and the charge for installation, alteration or other special services are billed by the seller to his customers as separate items (except when the purchaser signs an itemized invoice so as to make it a contract reflecting the intention of both the seller and the purchaser), or whether both items are included in a single billed price. See 86 Ill. Adm. Code 130.450. 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.

Your letter also mentions freight charges. Please see 86 Ill. Adm. Code 130.415, which addresses the taxability of transportation and delivery charges.

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