

This letter discusses the applicability of the exemptions from tax in the Retailers' Occupation Tax Act and Use Tax Act for gross receipts received from proceeds from the sale of a motor vehicle that is used for automobile renting, as defined in the Automobile Renting Occupation and Use Tax Act. 35 ILCS 120/2-5(5); 35 ILCS 105/3-5(10). (This is a PLR.)

May 25, 2017

RE: **COMPANY**
COMPANY 1
Private Letter Ruling Request

Dear Xxxxx:

This letter is in response to your letter dated March 3, 2017 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY and COMPANY 1 for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY or COMPANY 1, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

As counsel for and on behalf of COMPANY ("COMPANY") and COMPANY 1 ("COMPANY 1"), a related legal entity that will hold legal title to the motor vehicles that are rented and/or leased by COMPANY, we, pursuant to 2 Ill. Admin. Code §1200.110, hereby formally request a Private Letter Ruling ("PLR"), confirming that, based upon the facts represented below, (i) COMPANY's one-time sale of its entire fleet of motor vehicles to COMPANY 1, which vehicles will subsequently be leased back to COMPANY for rental or lease, is exempt from Retailers' Occupation Tax and (ii) the lease of motor vehicles from COMPANY 1 back to COMPANY are exempt from Illinois

Retailers' Occupation Tax and Illinois Use Tax because COMPANY's rental of the motor vehicles acquired from COMPANY 1 to end users are subject to Automobile Renting Occupation and Use Tax ("AROT"). Neither COMPANY nor COMPANY 1 are currently under audit by the Department regarding this issue. In addition, neither COMPANY nor COMPANY 1 are aware of any authority contrary to the views expressed in this PLR request. Furthermore, we ask that our client's name, address, and any contracts or exhibits attached be kept confidential and deleted from the publicly disseminated version of a PLR issued in response to this request. A Power of Attorney authorizing us to represent COMPANY and COMPANY 1 before the Department in connection with this PLR request is attached as Exhibit A.

FACTS

COMPANY is in the business of renting motor vehicles to transportation network drivers who use the rented motor vehicles primarily in providing ground transportation services in connection with the driver's participation in COMPANY 2's ("COMPANY 2") platform and service for matching transportation network drivers with passengers that request rides through COMPANY 2's Application ("COMPANY 2 Program"). COMPANY also rents motor vehicles to individuals, who will pick up the vehicle from a designated location, and use the vehicle for personal use on an hourly or daily basis ("City Program"). COMPANY is not engaged in the sale of motor vehicles at retail.

COMPANY enters into rental agreements ("COMPANY 2 Agreements") with the transportation network drivers pursuant to which COMPANY rents motor vehicles directly to transportation network drivers, COMPANY 2's independent contractor drivers, for their use in providing transportation services to the public through the COMPANY 2 Program. COMPANY also enters into rental agreements ("City Agreements") with individuals pursuant to which COMPANY rents motor vehicles directly to individuals, for their individual use, on an hourly or daily basis. The rental periods in both scenarios are always for one year or less in duration and the rents derived therefrom are subject to the AROT.

COMPANY is registered to collect and remits the AROT. On its initial purchase of motor vehicles, which were subsequently rented in the COMPANY 2 and City PROGRAMS, COMPANY claimed the "Sold for rental use" exemption on the applicable Illinois Form ST-556 and/or Illinois form RUT-25. Subsequently, COMPANY collects and remits the AROT based on its charges for motor vehicle rentals to COMPANY 2 and City PROGRAM drivers used in Illinois for periods of one year or less.

COMPANY 1, a related legal entity, was formed for the purpose of holding legal title to the above described motor vehicles. COMPANY now proposes to sell its entire fleet of motor vehicles to COMPANY 1 in a single arm's length transaction and subsequently leaseback the motor vehicles from COMPANY 1 for use in the COMPANY 2 and City PROGRAMS. The duration of the leases between COMPANY 1 to COMPANY will be for more than one year. COMPANY's lease of the vehicles from COMPANY 1 will be a true lease for Illinois purpose. In the future, COMPANY 1 will acquire all new vehicles that will be leased to COMPANY for use in the COMPANY 2 Programs and City PROGRAMS.

At all times throughout, and after this transaction, COMPANY will rent the motor vehicles to individuals and the transportation network drivers. The terms and conditions of the rental agreements between COMPANY and the drivers will not change. In fact, the sale will occur while some of the vehicles are under rent to, and possession of, City Program and COMPANY 2 transportation network drivers. The sale/leaseback transaction described above will not interrupt possession rights of the rentees or COMPANY. Likewise, after the completion of the sale to COMPANY 1 and leaseback to COMPANY, COMPANY will continue to remit all applicable AROT based on its charges for automobile rentals to COMPANY 2 and individual drivers.

ILLINOIS LAW & ANALYSIS

Retailers' Occupation Tax, Use Tax and Automobile Renting Occupation and Use Tax

In Illinois, the Retailers' Occupation Tax or the Use Tax is imposed on the sale of a motor vehicle by a retailer. 35 ILCS 120/3. A "Retailer" is defined to include every person engaged in the business of making sales at retail. 3 ILCS 105/2. A "sale at retail" includes any transfer of the ownership or title to tangible personal property for valuable consideration to a purchaser, 35 ILCS 120/1. Retail sales of motor vehicles, which are required to be registered or titled with the Illinois Secretary of State must be reported by the retailer. A separate transaction return must be prepared for each sale and filed with the Department. 35 ILCS 120/3, 35 ILCS 105/9, 35 ILCS 105/10. 86 ILL. Admin Code 130.540.

However, rentors that are subject to the AROT incur neither use tax ("UT") liability on the selling price of the vehicles, nor Retailers' Occupation Tax ("ROT") on the rental receipts. 35 ILCS 120/2-5(5) (ROT exemption), 35 ILCS 105/3-5(10) (UT exemption). The AROT defines "renting" as the transfer of the possession or right to possession of an automobile to a user for a valuable consideration for a period of one year or less. 35 ILCS 155/2. Illinois imposes the AROT on all persons engaged in the business of renting automobiles for periods of one year or less in Illinois at the rate of 5% of the gross rental receipts received from such business. 35 ILCS 155/3. There is also a complimentary use tax imposed upon the privilege of using, in the State, an automobile which is rented from a rentor, at the rate of 5% of the rental price of such automobile paid to the rentor under any rental agreement. 35 ILCS 155/4. The tax must be collected from the rentee by a rentor maintaining a place of business in the State and remitted to the Department of Revenue. 35 ILCS 155/4. Every person engaged in the business of renting automobiles in Illinois is required to register with the Department of Revenue. 35 ILCS 155/3.

Sale/Leaseback Transaction

In a typical sale/leaseback situation, user A, purchases taxable property from retailer B. User A then sells the taxable property to lessor C, and lessor C leases the taxable property back to User A. Under Illinois law, the first transaction, the retail sale from retailer B to user A, is a taxable retail sale. The second transaction, the sale from user

A to lessor C is a nontaxable occasional sale so long as user A is not otherwise engaged in the business of selling like-kind property. 86 Ill. Admin. Code § 130.110(e). “The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail...does not constitute engaging in a business of selling tangible personal property at retail within the meaning of the [Retailers’ Occupation Tax Act]”. 35 ILCS 120/1, 86 ILL. Admin. Code § 130.115. The third transaction, the leaseback of the motor vehicle from lessor C to user A, is not taxable because Illinois does not impose a sales tax liability on rental receipts in a sale leaseback. 86 ILL. Admin. Code § 130.2010; See also IL PLR ST 01-0031 (7/26/2001).

Under the facts presented in this request, there would be no ROT/UT due on the sale of motor vehicles from COMPANY to COMPANY 1 because this is not a retail sale and/or the sale would qualify as an isolated or an occasional sale not subject to tax. COMPANY’s one-time sale would qualify as an isolated or occasional sale of tangible personal property because COMPANY does not hold itself out as being engaged (or who does not habitually engage) in selling motor vehicles at retail. Indeed, COMPANY is not engaged in the sale of motor vehicles at retail. COMPANY’s business is strictly limited to the renting of automobiles for less than one year directly to individual drivers for use in the City PROGRAM and transportation network drivers for use in the COMPANY 2 Program. Moreover, no tax would be due on COMPANY’s leaseback of the vehicles from COMPANY 1 because the agreement is a true lease of more than one year as part of the sale/leaseback transaction. Accordingly, no tax is due on COMPANY 1’s lease to COMPANY because Illinois does not impose a tax on rental receipts from a true lease of more than one year.

Alternatively, should the Department not treat COMPANY’s sale of the motor vehicles as an isolated or occasional sale exempt from ROT/UT, COMPANY contends that no additional tax should be due because it will continue to collect AROT on its rental receipts derived from the rental of motor vehicles for less than one year to individual and network transportation drivers. The sale of the motor vehicles to COMPANY 1 does not disturb the lease terms and conditions between COMPANY and the rentees. In short, at all times, the motor vehicles are being rented to a user for a valuable consideration for a period of one year or less. Simply put, nothing has changed. To disregard this fact, and impose ROT on the sale from COMPANY to COMPANY 1, would result in a double taxation on the same property, the motor vehicles.

REQUEST FOR RULING.

Pursuant to 2 Ill. Admin. Code Section 1200.110, COMPANY and COMPANY 1 respectfully request that the Department of Revenue issue a private letter ruling declaring: (i) No additional Retailers’ Occupation or Use Tax is due on the sale/leaseback transaction described above because COMPANY’s sale of motor vehicles to COMPANY 1 qualifies as an isolated or occasional sale; and/or (ii) no additional Retailers’ Occupation or Use Tax is due on the sale/leaseback transaction described above because COMPANY will be collecting applicable AROT from the end users of the motor vehicles sold to and leased back from COMPANY 1. The imposition

of ROT/UT on the above described transaction would result in a double taxation of the same property.

If you concur, please issue your favorable ruling to the undersigned. If you do not concur, please advise so that we may discuss your reasoning before an adverse ruling is issued.

DEPARTMENT'S RESPONSE:

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.

A person who is engaged in the business of leasing or renting motor vehicles and who, in connection with such business sells any used motor vehicle to a purchaser for his use and not for the purpose of resale, is a retailer engaged in the business of selling tangible personal property at retail under this Act to the extent of the value of the motor vehicle sold. 35 ILCS 120/1c.

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 ("AROT"). 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 for the rental of automobiles under lease terms of one year or less. "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.

COMPANY is in the business of leasing or renting motor vehicles for periods of one year or less. When COMPANY sells motor vehicles after they are no longer leased or rented by it, COMPANY is liable for Retailers' Occupation Tax, unless an exemption from the tax can be found. Based on the language in Section 1c of the Retailers' Occupation Tax Act, the occasional sale exemption does not apply to sales of motor vehicles by persons engaged in the business of leasing or renting motor vehicles. COMPANY cannot claim the occasional sale exemption on the sale of the motor vehicles to COMPANY 1.

Unless an exemption can be found, COMPANY is liable for Retailers' Occupation Tax, and COMPANY 1 is liable for Use Tax, on the sale of the motor vehicles from COMPANY to COMPANY 1. The Retailers' Occupation Tax Act and Use Tax Act contain exemptions from tax for gross receipts received from proceeds from the sale of a motor vehicle that is used for automobile renting, as defined in AROT. 35 ILCS 120/2-5(5); 35 ILCS 105/3-5(10).

It is our understanding, based on your letter and additional information submitted to the Department, that prior to the transfer of the vehicles, COMPANY entered into the agreement with COMPANY 1 to sell the vehicles to COMPANY 1 and also entered into a 3 year lease whereby COMPANY 1 leased the vehicles to COMPANY. You also represented that the COMPANY had

committed to COMPANY 1 that after the sale of the vehicles to COMPANY 1 and lease of the vehicles by COMPANY, COMPANY would use the vehicles for short term rentals subject to AROT. Prior to the sale to COMPANY 1, COMPANY was collecting and remitting AROT on the rental of the motor vehicles. After the sale to COMPANY 1, COMPANY continued to collect and remit AROT on the rental of the motor vehicles. There has been no lapse in the collection and remittance of AROT by COMPANY as a result of the sale of the motor vehicles to COMPANY 1. When COMPANY 1 ultimately sells the motor vehicles that it purchased from COMPANY it will be liable for Retailers' Occupation Tax based on the selling price of the motor vehicles at the time the motor vehicles are sold.

It is the Department's ruling that COMPANY and COMPANY 1 may claim the rental exemption contained in Section 2-5(5) of the Retailers' Occupation Tax Act and Section 3-5(10) of the Use Tax Act, respectively, on the motor vehicles sold from COMPANY to COMPANY 1 and leased by COMPANY for automobile renting, as defined in AROT.

Regarding the purchase of new motor vehicles by COMPANY 1 and leased to COMPANY for the use of short term rentals subject to AROT, COMPANY 1 may also claim the rental exemption for newly-purchased vehicles as long as COMPANY and COMPANY 1 have entered a lease agreement for the motor vehicles prior to the purchase, COMPANY has committed in writing to COMPANY 1 prior to the purchase to use the vehicles for automobile renting subject to AROT, the motor vehicles are promptly transferred to COMPANY after the purchase, and the motor vehicles are in fact used by COMPANY for the use of short term rentals subject to AROT.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. 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
Chairman, Private Letter Ruling Committee

RSW:bkl