

P.A. 98-628 amended the Retailers' Occupation Tax Act and the Use Tax Act to provide that with respect to certain motor vehicles that are sold to a leasing company for the purpose of leasing the vehicle for a defined period that is longer than one year, "selling price" means "the consideration received by the lessor pursuant to the lease contract." To the extent the lease contract includes reimbursement for charges that are added to prices on account of the Retailers' Occupation Tax Act or the Use Tax Act, these amounts are part of the selling price subject to tax. See 35 ILCS 120/1. (This is a GIL.)

February 9, 2017

Re: **General Information Letter Ruling Request  
Retailers' Occupation Tax/Use Tax on Long-Term Leases of Motor Vehicles**

Dear Xxxxx:

This letter is in response to your letter dated November 14, 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](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:

Pursuant to 2 Ill. Admin. Code § 1200.120, this firm requests a General Information Letter from the Illinois Department of Revenue (the "Department") addressing the Retailers' Occupation Tax and Use Tax implications of passing through the cost of the lessor's Use Tax liability to the lessee on long-term leases of passenger motor vehicles that are subject to the alternate tax base that took effect on January 1, 20XX.

#### **Facts**

The lease transactions at issue are either indirect or direct. With respect to new vehicles, in both the indirect and direct lease scenario the motor vehicle dealer purchases a motor vehicle from a motor vehicle manufacturer. The dealer holds the

vehicle in inventory to sell or lease the vehicle to a customer. A retail customer who wishes to lease a motor vehicle selects the vehicle from the dealer's inventory. In the indirect scenario the terms of a lease are then negotiated between the dealer and the customer. At that time, the dealer submits a credit application signed by the customer to the lessor. Upon approval of the credit application by the lessor, the dealer and the customer execute a lease, the term of which exceeds 1 year. At the same approximate time as the execution of the lease, the dealer sells the leased vehicle and assigns the lease rights to the lessor. In the direct lease scenario, after the retail customer identifies the vehicle for lease, the dealer sells the vehicle to the lessor and the lessor negotiates the terms of the lease directly with the customer. In some cases the lease transactions will occur on used vehicles. In these cases, the vehicle will be purchased at wholesale at auction and the lessor will negotiate the lease directly with the customer.

The tax base in all three scenarios is the alternate tax base which is the total consideration received by the lessor under the lease agreement, including amounts due at lease signing and all monthly or regular payments charged over the lease term. See the definition of "selling price" in 35 ILCS § 120/1 and 35 ILCS § 105/2.

Pursuant to Ill. Admin. Code 130.220, "the sale of tangible personal property to a purchaser who will act as a lessor of such tangible personal property is a sale at retail and is subject to Retailers' Occupation Tax." Furthermore, Ill. Admin. Code 150.305(e) provides that "[T]he Use Tax does not apply to the rental payments made by a lessee to a lessor. However, ... the lessor is legally the user of the property and is taxable on the purchase price thereof."

Based on these provisions it is our understanding that with respect to new motor vehicles the dealer as the seller of the vehicle to the lessor is subject to Retailers' Occupation Tax. With respect to new and used vehicles the lessor as the user is subject to Use Tax. The lessee is not subject to either Retailer's Occupation Tax or Use Tax on the amounts due under the lease. However, for both new and used vehicles, in a typical lease transaction the amount of Use tax imposed on the lessor is passed through and collected from the lessee as a cost reimbursement. The tax may be paid by the lessee up-front at lease inception in whole or in part and/or may be capitalized in the lease in whole or in part and become part of the lease payments.

### **Request for Guidance**

We request confirmation regarding our understanding that the dealer as the seller of the vehicle is liable for Retailers' Occupation Tax and that the lessor as the purchaser of the vehicle is liable for Use Tax.

We also seek guidance on the treatment of the cost reimbursement of the tax that is passed on to the lessee.

The definition of "selling price" in 35 ILCS § 105/2 states:

"Selling price" or the "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, including cash,

credits, property, other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include interest or finance charges which appear as separate items on the bill of sale or sales contract nor charges that are added to prices by sellers on account of the seller's tax liability under the 'Retailers' Occupation Tax' or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by this Act, ..." (emphasis added).

Previous informal guidance issued by the Department indicates that the tax reimbursement received from the lessee is consideration under the lease and is therefore subject to Retailers' Occupation Tax and Use Tax. Although this is contrary to the language in 35 ILCS § 105/2 we assume that the provision does not apply to the tax cost reimbursement because the amount collected from the lessee is not tax imposed by either the Retailers' Occupation Tax or the Use Tax since Ill. Admin. Code 150.305(e) indicates that rental payments made by the lessee to the lessor are not subject to such tax. We request that you provide clarification for the basis of the Department's position on the taxability of the tax cost reimbursement particularly in light of 35 ILCS § 105/2.

We also request guidance with respect to the attached document that was previously informally provided by the Department of Revenue. The document references the "tax reimbursement" from the lessee and the recommended calculation methodology since tax is due on the tax reimbursement which includes tax on the tax. We request confirmation that the Department maintains its position with respect to the document and the recommended methodology for capturing the tax on the tax reimbursement.

Please let us know if you have any questions or would like to discuss the matter prior to issuing the General Information Letter.

## **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.

Retailers' Occupation Tax is measured by gross receipts from the sale of tangible personal property to end-users. See 35 ILCS 120/2-10. "Gross receipts" is defined as "the total selling price or the amount of such sales." See 35 ILCS 120/1. Use Tax is imposed on "the selling price . . . of the tangible personal property." See 35 ILCS 105/3-10. Before January 1, 2015, "selling price" was defined as ". . . the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including

the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include charges that are added to prices by sellers on account of the seller's tax liability under this Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act, . . . ." See 35 ILCS 120/1 and 35 ILCS 105/2. Beginning on January 1, 2015, Public Act 98-628 added language to the definition of "selling price" to provide that, "[n]otwithstanding any law to the contrary, . . ." only with respect to first division motor vehicles and certain second division motor vehicles that are sold to a leasing company (referred to in the statute as a "lessor") for the purpose of leasing the vehicle for a defined period that is longer than one year, "selling price" means ". . . the consideration received by the lessor pursuant to the lease contract, including amounts due at lease signing and all monthly or other regular payments charged over the term of the lease." See 35 ILCS 120/1 and 35 ILCS 105/2.

For the tax collected at the time the vehicle is sold and the lease is contemporaneously executed, Public Act 98-628 does not change who the Retailers' Occupation Tax or the Use Tax is imposed upon (Retailers' Occupation Tax on sellers and Use Tax on purchasers (lessors)) or that the tax is measured by the selling price. Public Act 98-628 does change how the selling price is determined for sales to leasing companies of motor vehicles that meet the statutory criteria. For sales meeting the statutory criteria, selling price is measured by the amount to be paid under the terms of the lease contract rather than by the consideration received for the sale.

With that background, we will address the questions you have asked.

As indicated above, when a motor vehicle is sold to a leasing company who will lease the vehicle for a period of more than one year, Retailers' Occupation Tax is imposed on the seller (motor vehicle dealer) and Use Tax is imposed on the leasing company (lessor). See 86 Ill. Adm. Code 130.101 and 86 Ill. Adm. Code 150.101. Illinois does not impose a tax on the lessee of a motor vehicle leased for a period of more than one year. (Note, however, that Automobile Renting Occupation and Use Tax applies to rentals of motor vehicles for one year or less; See 86 Ill. Adm. Code 180.101).

If the sale of a motor vehicle to a lessor qualifies under the definition of "selling price" in Section 1 of the Retailers' Occupation Tax Act established under Public Act 98-628, any tax reimbursement collected by the lessor from the lessee through the lease contract is included as part of the "selling price" as defined in Public Act 98-628. This is because this alternative definition of "selling price" in Public Act 98-628 is distinct from the previously existing definition of "selling price" and states that its provisions apply "[n]otwithstanding any law to the contrary, . . ." The alternative definition of selling price in Public Act 98-624 fails to include any language allowing for the exclusion of charges that are added to prices by sellers on account of the seller's tax liability under the Retailers' Occupation Tax or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act. Instead, "selling price" in Public Act 98-628 consists of ". . . the consideration received by the lessor pursuant to the lease contract . . ." (35 ILCS 120/1) To the extent that the lease contract includes a reimbursement for tax, this amount is included as part of the consideration received by the lessor pursuant to the lease contract. Without the exclusionary language found in the previously existing definition of "selling price," the alternative definition of "selling price" in Public Act 98-628 includes reimbursement for tax.

The document you reference is a tool that a leasing company may use when it chooses to reimburse itself under the lease contract for its Use Tax liability. It was distributed informally by the Department at seminars held when Public Act 98-628 first became effective. It was prepared as a practical tool to help explain to leasing companies the impact of the new law. However, it is not an official publication of the Department and is not necessarily a recommended methodology. Whether a lessee reimburses the lessor for the lessor's Use Tax liability is a private contractual matter between the parties. However, any amounts included in the lease contract become the "selling price" on which Retailers' Occupation Tax and Use Tax are owed. The concept in the document is borrowed from an official New York state publication. In New York, lessees are subject to tax. Hence the official nature of the New York publication versus Illinois.

We note also that the definition of "selling price" added by Public Act 98-628 applies only in situations where the lease is entered into contemporaneous with the sale of the vehicle to the leasing company. In all other cases, the selling price consists of the consideration for the sale, with an allowance for a trade-in credit. For example, sales of vehicles to entities sometimes described as independent leasing companies, where the leasing company purchases the vehicle and then, at a later time, enters into a lease of the vehicle, do not qualify for the definition of selling price added by Public Act 98-628.

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,

Samuel J. Moore  
Associate Counsel

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