

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 PLR.)

December 27, 2018

Dear Xxx

This letter is in response to your letter dated November 28, 2018, 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, 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 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:

Pursuant to 2 Ill. Admin. Code § 1200.110, COMPANY by its undersigned counsel requests that the Illinois Department of Revenue (the “Department”) issue a private letter ruling confirming that the gross receipts derived by COMPANY pursuant to its motor vehicle lease agreements are subject to Illinois state and local automobile renting occupation taxes.

A power of attorney executed by COMPANY in connection with this request is attached hereto as Exhibit A. To the best of the knowledge of both the COMPANY and its undersigned counsel the Department has not previously ruled on the same or a similar issue for COMPANY or a predecessor, nor has COMPANY or its representatives previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

I. Factual Background

COMPANY provides a service using a web-based mobile application that allows customers to lease used vehicles on flexible terms without an extended fixed term by assisting each customer with finding vehicles at nearby vehicle dealers for use based on the customer’s desired periodic payment. All these vehicles are first division automobiles for purposes of Illinois law.

Each customer submits information to COMPANY and COMPANY reviews and approves the customer's application and the customer enters into a COMPANY Agreement that governs the terms of service and the customer's use of the vehicle. Once the customer selects the vehicle, COMPANY purchases the vehicle from the dealer, titles the vehicle in its own name, and registers the vehicle in the name of the customer.

Under the COMPANY Agreement, the customer's lease of the desired vehicle has an initial term of 45 days with an option to renew on a monthly basis. The customer may terminate the agreement by returning the vehicle to COMPANY upon five days' notice to COMPANY except in the case of a termination due to default, conversion, destruction, total loss seizure, or upon reaching a maximum term of six years. Following an initial "Start Payment," payments are due periodically on a monthly basis or, in the case of a customer who will operate the vehicle as part of a ridesharing network, a weekly basis. Payments include not only access to and use of the identified vehicle but also routine maintenance, roadside assistance, a limited warranty, and, at the customer's option and for an additional amount, valid insurance with legally-sufficient coverage. All payments are made directly to COMPANY by the customer via the COMPANY mobile application. A copy of a model COMPANY Agree is attached hereto as Exhibit B.

COMPANY engages in the business of renting its vehicles from its business location in Illinois and is registered with the Department as Illinois Account ID #### and for state and local automobile rental occupation taxes with purchaser's account ID no. ####.

II. Statement of Applicable Laws

Persons who are engaged in the business of renting first division automobiles in Illinois under rental terms of one year or less are designated as rentors subject to state and local automobile renting occupation and use taxes (collectively, "ART"). 35 ILCS 155/3 provides in relevant part that ART "is imposed upon persons engaged in this State in the business of renting automobiles in Illinois at the rate of 5% of the gross receipts received from such business."¹ Every person engaged in the business of renting automobiles in Illinois is required to register with the Department. 35 ILCS § 155/3; see also 86 Ill. Admin Code § 180.115.

The "gross receipts" subject to ART is defined as the "total rental price", which is in turn defined generally to include all "consideration for renting or leasing an automobile valued in money, whether received in money or otherwise" but excluding "compensation paid to a rentor by a rentee in consideration of the waiver by the rentor of any right of action or claim against the rentee for loss or damage to the automobile rented and also does not include a separately stated charge for insurance or recovery of refueling costs or other separately stated charges that are not for the use of tangible personal property." 35 ILCS § 155/2; see also 86 Ill. Admin. Code §§ 180.120 – 180.125. ART on the taxable "gross receipts" is collected from rentees by the rentor and remitted to the Department on a monthly basis with Form ART-1, *Automobile Renting Occupation and Use Tax Return* on or before the twentieth day of the following month. See 86 Ill. Admin. Code § 180.140.

¹ In addition to the 5% state ART rate, a 1% local ART rate may be imposed by either a city or, outside a city, a county with respect to its unincorporated areas, although in Cook County an additional 6% Metropolitan Pier and Exposition Authority tax applies. See 55 ILCS §§ 5/5-1032 – 5/5-1033; 65 ILCS §§ 5/8-11-7 – 5/8-11-8; 70 ILCS § 210/13.

Renting” of first division automobiles subject to ART is defined as “any 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 (emphasis added); 86 Ill. Admin. Code § 180.101(a) (same). Accordingly, the “rentee” of such an automobile is defined similarly as “any user to whom the possession, or the right to possession, of an automobile is transferred for a valuable consideration for a period of one year or less, whether paid for by the ‘rentee’ or by someone else.” *Id.*

Automobiles purchased by rentors for purpose of renting are exempt from retailers’ occupation and use taxes due upon purchases of motor vehicles, including motor vehicles purchased for lease. The sale of tangible personal property, including motor vehicles, to a purchaser who will act as a lessor of such property is a sale at retail and is generally subject to retailers’ occupation tax. 86 Ill. Admin. Code § 130.220(a). However, an exemption from retailers’ occupation and use taxes exists for any “sale of an automobile to an automobile rentor for use as a rental automobile under lease terms of one (1) year or less, provided the lessor gives proper certification to the seller.” 86 Ill. Admin. Code § 130.220(b). The Department’s regulation summarizes this treatment at 86 Ill. Admin. Code § 130.2010 (c) as follows:

Rentors of automobiles under lease terms of one year or less incur neither Use Tax liability on the cost price of the vehicle(s), nor Retailers’ Occupation Tax liability on rental receipts. Persons engaged in this State in the business of renting automobiles in Illinois under lease terms of one year or less incur liability under the Automobile Renting Occupation and Use Tax Act [35 ILCS 155]. The Automobile Renting Occupation Tax rules are found at 86 Ill. Adm. Code 180.

The Department examines whether a lease term is of one year or less for purposes of ART by examining the initial stated term independently rather than the possible aggregate term including all renewal and extension options granted to the lessee. For example, the Department opined in Private Letter Ruling No. ST 92-0172-PLR (Mar. 27, 1992) under the following circumstances, in relevant part and with emphasis added:

Your customer will lease the automobiles to the federal government . . . and the lease of each automobile will be for a lease term of 12 months. Each lease will also contain a renewal option in favor of the lessee for two separate additional 12 month periods. As we understand that, the lease of each automobile is for a 12 month term and at the expiration of that initial 12 month term, the lessee will have the option to renew for another 12 months. At the expiration of that second 12 month term, the lessee will have the option to renew for another 12 months. In any event, the lessee is never bound to a lease term of longer than 12 months for any automobile.

So long as the lease term for each automobile never binds the lessee for a period longer than one year, your customer’s leasing activity is subject to the provisions of the Automobile Renting Occupation Tax.

See *also* General Information Letter ST 02-0106-GIL (May 3, 2002) (applying the standard set forth by Private Letter Ruling No. ST 92-0172-PLR and determining that ART does not apply where “the lease agreement ‘binds’ the parties to a lease term of greater than one year”); Private Letter Ruling No. ST 02-0030-PLR (Dec. 17, 2002) (same); Private Letter Ruling No. ST 03-0027-PLR (Nov. 19, 2003) (same).

III. Legal Analysis

The gross receipts derived by COMPANY pursuant to its motor vehicle lease agreements with Illinois lessees are subject to ART because the COMPANY Agreement has a stated term of 45 days and never binds the lessee for a period of longer than one year.

Paragraph 1 of the COMPANY Agreement, titled “Monthly Use Agreement”, states a term of the Agreement providing use of a first division automobile for a [sic] 45 days with options granted to the customer to extend the term thereafter until and/or unless certain contingencies arise:

This Agreement is between you and COMPANY, and not the dealership delivering the COMPANY Vehicle. This Agreement runs for a period of 45 days from the first date above and automatically renews on a monthly basis, unless cancelled under paragraph 9 or until you return the COMPANY Vehicle on 5 days’ notice to us. This Agreement ends: (i) when you return the COMPANY Vehicle as described in paragraph 5; (ii) when we terminate the Agreement under paragraph 11; (iii) after you reach a maximum use period of six (6) years; or (iv) if the COMPANY Vehicle is stolen, destroyed, involved in a total loss or seized by the government as described in paragraph 5.

Paragraph 5 of the COMPANY Agreement allows a customer to return the automobile to COMPANY for any reason upon 5 days’ notice to COMPANY. The COMPANY Agreement will terminate and no longer bind the customer on the later of 5 days from the notice date or the date of physical return of the automobile to COMPANY. The customer’s only residual obligation is payment for the accrued portion of the periodic payment and any outstanding amounts owing to COMPANY. Alternatively, Paragraph 11 of the COMPANY Agreement allows COMPANY to terminate the agreement and/or take other actions if the customer breaches any of its contractual obligations to COMPANY.

These clear and straightforward provisions providing for an initial term of 45 days with customer renewal options thereafter constitute a 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. The customer is never bound—neither at lease signing nor at any point thereafter—to the COMPANY Agreement for more than one year. Indeed, the value proposition of COMPANY subscription-based motor vehicle leasing business model is that the terms evidenced in the COMPANY Agreement are more flexible than conventional leases where the lessee is contractually obligated to a term of greater than one year. COMPANY leases of first class automobiles are therefore subject to ART on the gross receipts derived by COMPANY under the COMPANY

Agreement and are not subject to retailers' occupation or use taxes upon COMPANY purchases of such automobiles for lease.

IV. Requested Ruling

COMPANY by its undersigned counsel requests that the Department issue a private letter ruling confirming the analysis set forth above and concluding that the gross receipts derived by COMPANY pursuant to its motor vehicle lease agreements with Illinois lessees are subject [sic] ART.

V. Conclusion

We appreciate the Department's attention to this request for private letter ruling.

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 set forth at 35 ILCS 155/1 et seq. See 86 Ill. Adm. Code 180.101. The Act defines "renting" as "any 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." See 35 ILCS 155/2. This tax is imposed at the rate of 5% of the gross receipts from such business. "Gross receipts" from the renting of tangible personal property or "rent," means the total rental price or leasing price. See also, 86 Ill. Adm. Code 180.120 and 180.125. The Retailers' Occupation Tax Act provides an exemption from tax for 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)).

Based upon the facts provided in your letter (and the model COMPANY Agreement attached), leases of these first division automobiles by COMPANY under the COMPANY Agreement are subject to the Automobile Renting Occupation and Use Tax. The Agreement provides that:

"This Agreement runs for a period of 45 days from the first date above and automatically renews on a monthly basis, unless cancelled under paragraph 9 or until you return the COMPANY Vehicle on 5 days' notice to us."

By these terms, these first division automobiles are rented for a period of one year or less. As a result, the gross receipts from the rentals are subject to the Automobile Renting Occupation and Use Tax. Therefore, no Retailers' Occupation Tax or Use Tax is incurred when COMPANY purchases these first division motor vehicles to be leased under the model COMPANY Agreement attached.

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.

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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
Chairman, Private Letter Ruling Committee

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