

In general, a rental agreement with a rental term that consists of consecutive 90-day periods, but with rental payments that are due every other week, does not meet the statutory definition of “rental purchase agreement” and is therefore not subject to the Rental Purchase Agreement Occupation and Use Tax. See 35 ILCS 180/5. (This is a GIL.)

September 13, 2018

Dear Xxxxx:

This letter is in response to your letter dated April 13, 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.

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:

During February, we attempted to register to collect sales tax with the State of Illinois. We contacted NAME, Supervisor, Central Registration Division of the Department who told us we were not subject to the law. Furthermore, the Department’s online registration REFUSED to register my client without a permanent Illinois address. My client would strongly prefer to follow NAME’s advise [sic] but we believe his understanding of the Illinois law to be incorrect and want to avoid future assessments. We are writing this letter to request advise [sic] on the proper compliance with Illinois tax law.

FACTUAL BACKGROUND – HYBRID AGREEMENTS

COMPANY is engaged [sic] the business of financing dealer originated Rent-to-Own finance transactions on behalf of consumers. The key facts of the Taxpayer’s Rent to Own Finance Agreements (the “AGREEMENT”) ARE AS FOLLOWS: [See Exhibit A for typical AGREEMENT]

1. The TAXPAYER is a STATE based LLC with facilities exclusively within the State of STATE.

2. The Taxpayer enters into contracts with “Dealers” of consumer goods (i.e. furniture, mattresses, tires) to offer finance AGREEMENTS to “Customers” that typically do not qualify for conventional secured financing.
3. The Dealer offers the AGREEMENT to prospective Customers that request assistance in obtaining financing.
4. The AGREEMENT on its face shows the retail price plus sales tax to be paid on the purchase, and explains show [sic] both options of paying off the finance and obtaining ownership. The DEALER reports and pays the sales tax funded by the TAXPAYER to the State of STATE 1 [sic].
5. Historically, the Dealer has collected STATE 1 [sic] sales tax on all purchases including the portion financed by the Taxpayer and the portion paid directly by the Customer. However, based on preliminary advice, the Taxpayer began issuing STATE 1 [sic] resale certificates in early 20XX on its financed portion of the invoice, and has been collecting STATE 1 [sic] sales tax on such portions.
6. The CUSTOMER typically pays a \$\$ origination fee to the DEALER upfront.
7. The AGREEMENT is a hybrid finance arrangement that gives each customer two options:
 - a. 100 days Same-as-Cash. Most Customers initially intend to take advantage of this option, slightly under one-half complete this option.
 - b. Otherwise, the AGREEMENT defaults to a Rent to Own for four 90-day intervals after which the Customer automatically becomes the owner. The Customer may pay off the AGREEMENT and take unconditional ownership at any later time by paying off an amount equal to 65 percent of all future payments.
8. While that Customer has the option of terminating the Agreement without taking ownership at the end of the first, second and third 90-day intervals, the Customer would have to ship the item to the Taxpayer’s facility in CITY, STATE. This simply does not occur. Rather, on such instances, the Customer and Taxpayer negotiate an acceptable payoff, or the Taxpayer simply charges off the balance. This ‘Negotiated’ or ‘charge-off’ represents nearly one-fourth of all AGREEMENTS. There simply is no infrastructure for re-renting items where the Customer desires to terminate the 12-month agreement.

ILLINOIS LAW

Effective January 1, 2018, Illinois appears to impose its “sales” or “use” tax on RTO transactions. CHAPTER 815 delineating BUSINESS TRANSACTIONS.
[<http://www.ilga.gov/legislation/ilcs/ilcs2.asp?ChapterID=67>]

815 ILCS 655 wherein the key definition is:

- (6) “Rental-purchase agreement” means an agreement for the use of merchandise by a consumer for personal, family or household purposes for an initial period of 4 months or less that is automatically renewable with each payment after the initial period and that permits the consumer to become the owner of the merchandise.

The law was drafted by an industry group that does not represent the Taxpayer interests. Under the law, the tax responsibility is passed to the Merchant and to the 'assignees' of the Merchant.

Accordingly, the Company becomes a merchant unless it can break from the definition of "Rental purchase agreement."

"Merchant" means a person who, in the ordinary course of business, regularly leases, offers to lease or arranges for the leasing of merchandise under a rental-purchase agreement, and includes a person who is assigned an interest in a rental-purchase agreement.

CONCLUSION

It appears that my client is in fact a Merchant as defined above. Notwithstanding, my client would prefer to pay sales tax on the front end as was required in the prior law and avoid registration. Please confirm the applicability of the law to my client.

DEPARTMENT'S RESPONSE:

RENTAL PURCHASE AGREEMENT OCCUPATION AND USE TAX:

Effective January 1, 2018, persons who are engaged in the business of renting merchandise in Illinois under a rental purchase agreement are subject to the Rental Purchase Agreement Occupation and Use Tax. 35 ILCS 180/1 *et seq.* A "rental purchase agreement" is an agreement for the use of merchandise by a consumer for personal, family, or household purposes for an initial period of 4 months or less that is automatically renewable with each payment after the initial period and that permits the consumer to become the owner of the merchandise. For more information regarding rental purchase agreements, please see the Rental Purchase Agreement Act (815 ILCS 655/0.01 *et seq.*). The Rental Purchase Agreement Occupation and Use Tax is imposed at the rate of 6.25% of the gross receipts from the business of renting merchandise in Illinois under a rental purchase agreement. The Rental Purchase Agreement Occupation and Use Tax does not apply to tangible personal property that is required to be titled and registered by a State agency.

A rental transaction is subject to the Rental Purchase Agreement Occupation and Use Tax if the transaction meets the definition of "rental purchase agreement" under the Rental Purchase Agreement Occupation and Use Tax Act (35 ILCS 180/5). The Department is of the opinion that, in general, a rental agreement with a rental term that consists of consecutive 90-day periods, but with rental payments that are due every other week, does not meet the statutory definition of "rental purchase agreement." That is because, in order to be a "rental purchase agreement" subject to the Rental Purchase Agreement Occupation and Use Tax, the rental agreement must automatically renew with each payment after the initial period. If rental payments are due every other week after the initial period is completed, but the rental term itself does not renew until 90 days after the initial period, then the statutory requirements have not been met. In addition, the House sponsor of the legislation referred in debate to "rent-to-own dealer[s]" when discussing taxpayers subject to the Act. See State of Illinois, 100th General Assembly, House, Transcription of Debate, May 30, 2017, page 17. COMPANY does not appear to fit that category. It is important to note, however, that each rental

agreement must be evaluated in light of the specific rental contract and the other aspects of the transaction to determine whether the Rental Purchase Agreement Occupation and Use Tax applies.

LEASES:

Please note that 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 conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010.

A true lease generally has no buyout provision at the close of the lease. If a buyout provision does exist, it must be a fair market value buyout 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. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on lease receipts. Consequently, lessees incur no tax liability. See 86 Ill. Adm. Code 130.2010.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

While we cannot rule specifically in the context of a General Information Letter, a lease contract meeting the following conditions would generally be considered to be a true lease rather than a conditional sale: (1) a customer who has otherwise met the requirements of the agreement can cease making payments and return the property at the end of any lease term without further payment obligation, (2) the customer is never under any obligation to purchase the property, and (3) the agreement does not guarantee a sale of the tangible personal property at the inception of the contract. Because, under this type of lease agreement, the lessee is free to walk away from the lease at the end of each lease term and therefore a sale of the property is not guaranteed at the time the lease is entered into, it is the Department's opinion that such an agreement would be a true lease. A lessor engaging in this type of lease should pay Use Tax to his supplier for all items that he purchases to lease. Receipts from the rental of tangible personal property under a true lease are not subject to Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2013(g). Therefore, none of the monthly lease payments, including the last lease payment, would be subject to Retailers' Occupation Tax.

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,

Samuel J. Moore

Associate Counsel

SJM:bkl