

This letter discusses leases to governmental bodies and the temporary storage exemption. See 35 ILCS 105/3-5(23) and 3-55(e). (This is a PLR.)

April 8, 2021

Dear NAME:

This letter is in response to your letter dated December 14, 2020, 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 COMPANY1, 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. A private letter ruling on behalf of multiple taxpayers will not be issued with two exceptions, neither of which apply. 2 Ill. Adm. Code 1200.110(a)(3)(A). Issuance of this ruling is conditioned upon the understanding that neither COMPANY1, 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:

The purpose of this letter (“Letter”) is to request a private letting ruling under 86 Ill. Admin. Code § 1200.110 on behalf of COMPANY1 (“COMPANY1”) and COMPANY2 (“COMPANY2”) on which COMPANY1 and COMPANY2 (collectively, the “Parties”) may rely. Specifically, the parties request a ruling that the lease by COMPANY1 of certain laptop computers to COMPANY2 that COMPANY2 in turn leased to a GOVERNMENT AGENCY (“the AGENCY”) under a Device as a Service agreement was exempt from Illinois Use Tax by reason of either or both of the temporary storage exemption or the exemption for lease to a government.

Neither COMPANY1 nor COMPANY2 has pending any sales or use tax audits or litigation with the Illinois Department of Revenue (the “Department”) for the pertinent periods.

Powers of attorney authorizing the undersigned to represent each of COMPANY1 and COMPANY2 are attached. This request pertains only to the periods September 20XX – Current.

FACTS

The COMPANY1 / COMPANY2 Agreement

On September 26, 20XX, COMPANY3 as lessor and COMPANY2 as lessee entered into a Master Lease Agreement (the “MLA”, a redacted copy of which is attached as Exhibit 1) for the lease of laptop computers that COMPANY2 in turn leased to the AGENCY under the terms of a preexisting agreement with AGENCY as described below. Before performing on the lease, COMPANY3 assigned the lease to its affiliate, COMPANY1. The laptops are referred to as “Products” in the MLA and as “Devices” in the AGENCY Agreement (as defined below). We will use the term Product when referring to the MLA and Devices when referring to the AGENCY Agreement. In all events, those terms refer to the same items.

COMPANY1 leased the Products to COMPANY2 under the MLA pursuant to a schedule in the form attached hereto as Exhibit 2 (the “Schedule”). The Schedule provides for a primary lease term of 12 months, at the end of which COMPANY2 could purchase the Product at fair market value (at a flat specified price per unit), renew the lease term on a month-to-month basis at a flat specified price per month, or return the Product to COMPANY1 no later than the end of the twelfth month. Each Schedule specifies, “Lessee represents and warrants that the Products are being used by the lessee in fulfillment of its obligations as the Prime Contractor on a contract (“Prime Contract”) with the GOVERNMENT.

COMPANY1 delivered approximately 60 percent of the Product to COMPANY2 at a warehouse in Illinois and delivered the balance to COMPANY2 at a warehouse in STATE1.

The AGENCY / COMPANY2 Agreement

On June 28, 20YY, COMPANY2 and AGENCY entered into an agreement, styled a Device as a Service (“dDaaS”) Agreement (the “AGENCY Agreement”), pursuant to which COMPANY2 leased laptop computers and mobile Devices and provided the services described below to AGENCY for purposes of a project. The initial term of the Agreement was June 28, 20YY through June 30, 20XX. Subsequent to the initial contract award, COMPANY2 and AGENCY modified the AGENCY

Agreement approximately 21 times (including, most recently, on July 31, 20ZZ), extending the term through October 31, 20ZZ. Redacted copies of the AGENCY Agreement and the amendments thereto are attached as Exhibits 3-26.

The AGENCY agreement requires COMPANY2 to perform six separate tasks, each of which is separately invoiced and the charge for each of which is computed in a different manner (a sample invoice is attached as Exhibit 27). The six tasks are as follows:

- Task 1: Device Provisioning and Kitting
- Task 2: Cellular Network Services
- Task 3: Logistics
- Task 4: Mobile Device Management
- Task 5: Planning and Management
- Task 6: Ongoing Support

Task 1: Device Provisioning and Kitting. “Provisioning” consists of the acquisition of computers, smartphones, and tablets that meet prescribed technical specifications, wiping preexisting software from those Devices, loading software provided by AGENCY (including Mobile Device Management (“MDM”) software that allows for the Devices to be tracked and for software updates to be downloaded), installing and activating SIM cards in all smartphones and charging all smartphones. “Kitting” consists of placing into a kit box the device, wall adapter and power cable, car charger, earbuds, case, additional accessories upon request, and end-user documentation and placing a printed label on the box. In addition, Kitting requires that each Device be fitted with a physical tracking device. Finally, upon AGENCY’S return of the Device, COMPANY2 is required to perform a device sanitization and factory reset.

Task 2: Cellular Network Services. COMPANY2 is required to arrange for nationwide cellular services with one or more carriers to provide service to the Devices.

Task 3: Logistics. COMPANY2 is required to ship all Devices to locations specified by AGENCY, including AGENCY Headquarters, Regional Centers, Area Offices, Data Capture Centers, the CENTER, and select employee homes. COMPANY2 is also required to implement an asset management plan that includes end-to-end location and status tracking of all mobile Devices, provide a project dashboard for AGENCY, perform troubleshooting, track and report on inventories, and ensure secure storage and handling of Devices. COMPANY2 is also required to provide for return shipping at the end of the usage period.

Task 4: Mobile Device Management. COMPANY2 is required to supply an MDM solution that can support up to approximately 500,000 Devices, operate and maintain the MDM solution, pushing updates when directed by AGENCY, and develop and maintain a Mobile Device Management plan.

Task 5: Planning and Management. COMPANY2 is required to develop a project management plan consistent with best practices, including status reports, subcontractor management, risk management, quality management, and program management reviews.

Task 6: Ongoing Support. Ongoing support includes holding a kick-off meeting, providing a project dashboard, compliance with technical directives, risk management, change control, integration support, quality management, technology refresh, shipping analysis and support, logistics planning and support, provision of an optional secure messaging system, and help desk support.

Payments to COMPANY2

COMPANY2 charges a separate fixed price per unit for each of Tasks 1 – 4 (there is an upfront per unit charge for Tasks 1 and 3 and monthly per unit charges for Tasks 2 and 4). COMPANY2 charges a flat monthly fee for Task 5 and charges for Task 6 on a time and materials basis. The charges for each task are separately stated on each invoice. COMPANY2 records the payments for the Devices as *leasing* revenue, the kits and accessories as sales revenue, and all other payments as *service* revenue. The lease revenue constitutes the vast majority of the total revenue under the Agreement.

Delivery and Use of Devices

In Q4 20XX and Q1 20ZZ, COMPANY2 took delivery of 56,379 Devices from COMPANY1.¹ The particular Devices were all laptop computers. COMPANY1 delivered 36,162² of the Devices to COMPANY2 in Illinois and the balance to COMPANY2 in STATE1. COMPANY2, after provisioning and kitting the Devices it received in Illinois, shipped approximately 95.5% of them to AGENCY outside Illinois. COMPANY2

¹ Substantially all of the Devices were delivered in Q1 20ZZ.

² 41 of these devices never left COMPANY2's warehouse. No ruling is requested with respect to these 41 devices. In addition, 143 of the Devices were received prior to execution of the DFS MLA in September 20XX. No ruling is requested with respect to those 143 Devices. In addition, 1,596 Devices were shipped by COMPANY2 to AGENCY at Illinois locations.

shipped the devices out to AGENCY on a rolling basis, with approximately 93% of the Devices leaving COMPANY2's warehouse within approximately 6 months of the date COMPANY2 received the Devices from COMPANY1.

In Q4 20ZZ AGENCY returned the Devices to COMPANY2 at a third party facility in STATE2 where they were sanitized. COMPANY2 then exercised its option under the COMPANY1 MLA to purchase 21,354 of the Devices, and, in December 20ZZ while those 21,354 Devices were still outside Illinois, COMPANY2 sold them to a third-party reseller. In addition, COMPANY2 brought 2,400 devices from STATE2 back to Illinois (1,411 of which it had initially received in Illinois and 989 of which it had initially received in STATE1) with the intent to exercise its purchase option and resell those Devices to a third-party reseller, which in fact COMPANY2 did shortly after those Devices returned to Illinois. COMPANY2 brought an additional 1,200 devices from STATE2 to STATE1 where it exercised its purchase right and then resold the devices to a third-party reseller.

The remaining 31,425 Devices were returned to COMPANY2 facilities in Illinois and STATE1 in Q4 20ZZ – with 18,838 Devices returned to Illinois and the balance of 12,587 going to STATE1 – to be reimaged, reprovisioned, and rekitting to AGENCY specifications. COMPANY2 reshipped those Devices to AGENCY at various locations inside and outside Illinois in Q1 20WW. Because of the term of use of the Devices re-shipped to AGENCY would exceed the initial 12-month lease term under the MLA with COMPANY1, COMPANY2 renegotiated the COMPANY1 lease to extend the term with COMPANY1 by 7 months rather than pay the monthly amount specified in the MLA for exceeding the initial 12-month lease term. A redacted copy of the renegotiated agreement is attached hereto as Exhibit 28.

Of the 18,838 Devices that were returned to COMPANY2 in Illinois for reprovisioning and rekitting, COMPANY2 originally had received 12,769³ from COMPANY1 in Illinois and 6,069 from COMPANY1 in STATE1.⁴ COMPANY2 is able to track the depreciation on each device. Please see the chart attached as Appendix A summarizing the locations of the Devices at COMPANY2 facilities.

³ Of these 12,769 Devices, 6 had been previously shipped by COMPANY2 to AGENCY in Illinois.

⁴ Of the 6,069 Devices that COMPANY1 originally delivered in STATE1 and that came back to Illinois for AGENCY reuse, 43 were then shipped by COMPANY2 to AGENCY in Illinois. Of the devices that COMPANY1 first delivered to COMPANY2 in Illinois and that came back to STATE1 for AGENCY reuse, 71 were then shipped by COMPANY2 to AGENCY in Illinois (1 of the 71 had been shipped by COMPANY2 to AGENCY in Illinois in first use). Of the Devices that were first delivered by COMPANY1 to COMPANY2 in STATE1 and that came back to STATE1 for AGENCY reuse, COMPANY2 shipped 45 to AGENCY in Illinois.

COMPANY2 expects to purchase from COMPANY1 for resale the Devices reshipped to AGENCY in Q3 20WW. The Devices will be shipped to COMPANY2 in STATE1. The Devices will then be sanitized and sold to a third party reseller.

Use Tax Payments

COMPANY1 self-assessed and remitted Illinois use tax on its returns for January, April, June, July, and August 20ZZ for all Devices it delivered to COMPANY2 in Illinois. COMPANY2 believes COMPANY1 did so improperly and that Use Tax is owed, if at all, only as described below.

EXPLANATION OF GROUNDS TO SUPPORT REQUEST

Legal Authorities

Generally, for purposes of the Retailers' Occupation Tax Act (the "ROT Act," 35 ILCS 120/1, *et seq.*) and the Use Tax Act (35 ILCS 105/1, *et seq.*), a lessor is subject to Use Tax when purchasing tangible personal property for rent or lease to others. 86 Ill. Adm. Code ("Reg") §§ 130.2010(b) and 150.305(e). 35 ILCS 120/2-5(37) exempts from ROT "personal property sold to a lessor who leases the property, under a lease of one year or longer executed or in effect at the time of the purchase, to a governmental body that has been issued an active tax exemption identification number by the Department under Section 1g of this Act."

Similarly, 35 ILCS 105/3-5(23) exempts from Use Tax –

[p]ersonal property purchased by a lessor who leases the property, under a lease of one year or longer executed or in effect at the time the lessor would otherwise be subject to the tax imposed by this Act, to a governmental body that has been issued an active sales tax exemption identification number by the Department under Section 1g of the Retailers' Occupation Tax Act. If the property is leased in a manner that does not qualify for this exemption or used in any other non-exempt manner, the lessor shall be liable for the tax imposed under this Act or the Service Use Tax Act, as the case may be, based on the fair market value of the property at the time the non-qualifying use occurs."

Section 3-55(e) of the Use Tax Act exempts –

the temporary storage, in this State, of tangible personal property that is acquired outside this State and that, after being brought into this State and stored here temporarily, is used solely outside this

State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing, or shaping, and, as altered, is used solely outside this State.

See also Reg. 150.310(a)(4) (same) (referred to as the Temporary Storage Exemption”). The regulations further provide that the exemption applies only if the property is acquired in a manner that would not subject the property to ROT on the part of the seller. Reg. 150.310(c).

If property is brought back into Illinois after use outside Illinois, Use Tax is due at the time the property is returned to Illinois, with depreciation allowable against the Use Tax base on a straight-line basis for the period the property was outside Illinois. *Shared Imaging, LLC v. Hamer*, 2017 Ill. App. (1st) 152817, 84 N.E. 3d 398 (2017).

In *Shared Imaging*, the Appellate Court held that three items of medical device equipment that the taxpayer (i) acquired outside Illinois, (ii), stored in Illinois for 18, 28, and 47 days, respectively, (iii) leased to customers outside Illinois, and (iv) brought it back to Illinois for storage upon completion of the respective lease terms did not qualify for the temporary storage exemption because the property was later returned to Illinois, but that the tax applied on the depreciated value of the property at the time it was returned to Illinois.

Nutrition Headquarters, Inc. v. Department of Revenue, 106 Ill. 2d 58 (1985), held that catalogs that were printed and stamped outside Illinois, and brought into Illinois to have mailing labels affixed to be sorted, and to be mailed outside Illinois qualified for the temporary storage exemption. The Court distinguished the holding on similar facts in *Time, Inc. v. Department of Revenue*, 11 Ill.App.2d 282 (1973) on the ground that after that decision the General Assembly added the following language to the temporary storage exemption: “or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this state. The court reasoned that the affixing of mailing labels, sorting, and mailing, fell within the exceptions for adding to, altering or processing the property that would then be used solely outside Illinois.

In PLR ST-15-0016 (November 13, 2015) (“PLR 15-16”), the Department addressed facts similar to those presented here. In that ruling, the taxpayer, ABC, a systems integrator and supply chains solutions provider, was headquartered outside Illinois and had two warehouses in Illinois. As is pertinent here, the taxpayer, in what is described as Scenario 4 in the ruling, acquired computer equipment for customers outside Illinois and had the equipment delivered to the taxpayer’s Illinois warehouse for

further alteration or processing consisting of one or more of asset tagging, imaging, and “rack and stack.”

“Asset tagging” consisted of the placement of a serial number on the computer equipment per the customer’s instructions. “Imaging” consisted of the placement of different software and operating systems on laptops or servers per the customer’s instructions (the software or operating systems could be customer-owned or sold to the customer by the taxpayer). “Rack and stack” consisted of racking and stacking of various servers and server components into single cabinets together with the labelling and organization of all wiring, per the customer’s instructions. The equipment was then stored at the taxpayer’s warehouse pending shipping instructions from the customer. Title to the equipment was transferred, and invoices issued, to the customer upon the taxpayer’s receipt from the OEM of the equipment at the taxpayer’s Illinois warehouse.

The Department ruled:

Based upon the representations in your letter and subsequent email, it is our understanding that in Scenario 4 the equipment is acquired outside of Illinois and is shipped to ABC’s Illinois warehouse where it is temporarily stored while ABC performs one of three services on the equipment. Your letter states that the product is stored in the Illinois warehouse until the customer provides ABC with shipping instructions. Based on our understanding of Scenario 4 as described in your letter and subsequent email, it is our opinion that the temporary storage exemption applies to Scenario 4.

Application of Law to Facts

At issue is the proper taxation of Devices that COMPANY1 manufactured or acquired outside Illinois and leased to COMPANY2 for sublease to the AGENCY that—

- (i) COMPANY1 initially delivered to COMPANY2 in Illinois, that COMPANY2 provisioned, kitted and shipped to AGENCY outside Illinois, and that never returned to Illinois (Group1);
- (ii) COMPANY1 initially delivered to COMPANY2 in Illinois, that COMPANY2 provisioned, kitted and shipped to AGENCY outside Illinois, and that AGENCY later returned temporarily to COMPANY2 in Illinois for reprovisioning, rekitting, and reshipping to AGENCY outside Illinois (Group 2);

- (iii) COMPANY1 initially delivered to COMPANY2 in Illinois, that COMPANY2 provisioned, kitted and shipped to AGENCY outside Illinois, and that AGENCY later returned temporarily to COMPANY2 in Illinois that COMPANY2 intended to, and did, shortly thereafter purchase and resell to an unrelated third party (Group 3); and
- (iv) COMPANY1 initially delivered to COMPANY2 in STATE1, that COMPANY2 provisioned, kitted and shipped to AGENCY outside Illinois, that AGENCY returned to COMPANY2 in Illinois for reprovisioning, rekitting and reshipping to AGENCY outside Illinois, and that never returned to Illinois (Group 4).

Federal Exemption. As noted above, the lease between COMPANY1 and COMPANY2 was for a period of 12 months and expressly stated, “Lessee represents and warrants that the Products are being used by the lessee in fulfillment of its obligations as the Prime Contractor on a contract (‘Prime Contract’) with the GOVERNMENT. As such, all of the Devices were exempt under ROT Act § 2-5(37) and Use Tax Act § 3-5(23).⁵

To the extent the Devices are not exempt from tax under ROT Act § 2-5(37) and Use Tax § 3-5(23), they are exempt under the Temporary Storage Exemption in Use Tax Act § 3-55(e) in the manner set forth below.

Group 1. Under Illinois law, absent an applicable exemption, a lessor of property is subject to use tax when it delivers property from outside Illinois to a lessee in Illinois. 86 Ill. Adm. Code (“Reg.”) §§ 130.2010(b) and 150.305(e). However, Illinois provides an exemption from use tax for property stored temporarily in Illinois and then used solely outside Illinois. Section 3-55(e) of the Use Tax Act; Reg. 150.310(a)(4). Property also qualifies for the temporary storage exemption that is altered in Illinois by converting, fabricating, and manufacturing, printing, processing, or shaping, and as altered, is used solely outside Illinois. *Id.* The Devices fit squarely within this exemption as they were acquired or manufactured by COMPANY1 outside Illinois and delivered to COMPANY2 in Illinois where (i) prior software was removed and new software installed, (ii) they were

⁵ Although the lease term with the AGENCY exceeded 12 months, we note that (i) 939 Devices were delivered to COMPANY2 in Illinois and returned to COMPANY2 within 12 months and (ii) 76 Devices were delivered to COMPANY2 outside Illinois but returned to COMPANY2 in Illinois within 12 months and in either case not reshipped to the AGENCY. If such Devices were subject to Use Tax upon their return to Illinois, even though the literal requirements of the exemption were met since the term of the agreement exceeded 12 months, such Devices would be subject to tax under the Use Tax Act on their fair market value at the time they were returned to COMPANY2. Use Tax Act § 3-5(23)

packaged with accessories, and (iii) they were then shipped outside Illinois. COMPANY2's activities are in fact substantially identical to those described in Scenario 4 in PLR 15-16, which the Department held qualified for the temporary storage exemption. Therefore, no use tax was due with respect to those Devices described in Group 1.⁶ There are 20,202 Devices in Group 1.

Group 2. The facts for the Devices in Group 2 are the same as those in Group 1, except that the Devices described in Group 2 subsequently returned temporarily to Illinois to be reprovisioned, rekitting and reshipped to AGENCY. Of the 12,769 Devices returned to Illinois in Group 2, 11,830 were reshipped to AGENCY outside Illinois and 128 were reshipped to AGENCY at locations in Illinois. Although the Devices returned only temporarily to Illinois, under *Shared Imaging* the temporary return to Illinois causes the Devices to be subject to use tax at the time of their return at their depreciated value. Thus, Use Tax is due on the Devices that returned to Illinois upon their return at their depreciated value.

Group 3. The facts for the Devices in Group 3 are the same as for those in Group 1, except that the Devices described in Group 3 subsequently returned temporarily to Illinois for the purpose of being purchased by COMPANY2 and resold and the Devices were in fact purchased and resold. Thus, when the Devices were returned to Illinois they were being held for sale and were not being used in Illinois. There are 1,411 Devices in Group 3.

Group 4. The Devices in Group 4 were initially shipped to STATE1 where they were provisioned, kitted, and shipped to AGENCY outside Illinois. After the initial period of use by AGENCY, 6,069 Devices were sent temporarily to COMPANY2 in Illinois where they were reprovisioned, rekitting, and 5,993 Devices were reshipped to AGENCY outside Illinois. Because the Devices in Group 4 were stored temporarily in Illinois for reprovisioning, rekitting and reshipment outside Illinois, and were temporarily stored in Illinois only once, no use tax is due with respect to 5,993 Devices in Group 3.⁷

⁶ Of the Devices COMPANY1 initially shipped to COMPANY2 in Illinois, approximately 4.5% of the Devices were shipped to AGENCY in Illinois. It is understood that if the federal exemption is unavailable Use Tax is due on those devices at the time COMPANY1 delivered them to COMPANY2, and no ruling is then requested with respect to those devices.

⁷ As noted in fn 2, above, some of the Devices initially delivered by COMPANY1 in STATE1 and then returned to Illinois for reprovisioning, rekitting, and shipment back to AGENCY either had been delivered initially by COMPANY2 to AGENCY in Illinois or reshipped to AGENCY in Illinois. Assuming the federal exemption does not apply, it is understood that under the temporary storage exemption, Use Tax is due on those devices at the time they were shipped to AGENCY in Illinois.

The authorities described above all support COMPANY1's position that the temporary storage exemption applies as described in the foregoing scenarios.⁸

RULINGS REQUESTED

The Parties request that the Department rule that:

1. COMPANY1 is exempt from Use Tax on all of the Devices under Use Tax Act § 3-5(23) because COMPANY2 subleases the Devices to the AGENCY under an agreement the term of which exceeded 12 months.
2. To the extent it is determined that Devices COMPANY2 subleased to AGENCY did not meet the 12 month requirement because those Devices were returned to COMPANY2 in Illinois within 12 months and not shipped back out to AGENCY, even though the term of the Agreement with AGENCY exceeded 12 months, COMPANY1 would be subject to Use Tax on such Devices under Use Tax Act on the fair market value of the devices at the time they were returned to COMPANY2.

To the extent it is determined that the exemption for lease to the federal government does not apply, the following rulings are requested under the Temporary Storage Exemption:

3. COMPANY1 is exempt from Use Tax on the Devices in Group 1 under the Temporary Storage Exemption
4. COMPANY1 is subject to Use Tax on the Devices in Group 2 only upon their return to Illinois on their depreciated value.
5. COMPANY1 is exempt from Use Tax on the Devices in Group 3 under the Temporary Storage Exemption.
6. COMPANY1 is exempt from Use Tax on the Devices in Group 4 under the Temporary Storage Exemption.

⁸ The only potentially contrary authority is an old administrative hearings decision (UT 96-6 (Jan. 1, 1995)), in which the administrative law judge (the "ALJ") held leased property stored by the lessee in Illinois and then removed by the lessee after extensive periods of storage did not qualify in Illinois for the temporary storage exemption. The ALJ relied in part on the lengthy period the leased property remained in Illinois (often over a year), and in part on the proposition that leasing is a use and as a result of the property could not be used solely outside Illinois. Of course, storage itself is a use and therefore use can never be solely outside Illinois if it is ever stored in Illinois, and thus, the ALJ's reasoning would render the statute moot. Moreover, the ALJ's reasoning is flatly contrary to the statute's purpose of encouraging the use and growth of Illinois distribution facilities. Administrative Hearing decisions are not precedential, and given the age of this ruling and its improper reasoning, it should be afforded no weight.

* * * * *

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions, or would like any additional information. *We respectfully request a conference in the event you tentatively conclude that an adverse ruling would be warranted.*

DEPARTMENT'S RESPONSE:

Private letter rulings 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. Private letter rulings are binding on the Department only as to the taxpayer who is the subject of the request for ruling. A private letter ruling on behalf of multiple taxpayers will not be issued with two exceptions. 2 Ill. Adm. Code 1200.110(a)(3). Neither one of the exceptions appear to apply to the instant request. This private letter ruling is issued to COMPANY1.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, 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 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

Generally, the tax-exempt status of lessees does not affect the tax liability of lessors. The Use Tax burden remains on the lessor notwithstanding the status of the lessee. See *Continental Illinois Leasing Corp. v. Department of Revenue*, 108 Ill. App.3d 583 (First Dist., 1982). However, please note that Illinois does have two exemptions for leases to entities that have active Illinois exemption (E-numbers). The first exemption is for certain purchases of tangible personal property by persons who are leasing that property to exempt hospitals that have an active E-number issued by the Department. 35 ILCS 120/2-5(37). See the Department's regulation at 86 Ill. Adm. Code 130.2011 for the requirements regarding this exemption. The second exemption is for purchases of tangible personal property by persons who are leasing that property to a governmental body that has an active E number issued by the Department. See the Department's regulation at 86 Ill. Adm. Code 130.2012 for the requirements regarding that exemption.

Government Lease Exemption

The Use Tax provides an exemption for tangible personal property leased to the federal government.

Personal property purchased by a lessor who leases the property, under a lease of one year or longer executed or in effect at the time the lessor would otherwise be subject to the tax imposed by this Act, to a governmental body that has been issued an active sales tax exemption identification number by the Department under Section 1g of the Retailers' Occupation Tax Act. If the property is leased in a manner that does not qualify for this exemption or used in any other non-exempt manner, the lessor shall be liable for the tax imposed under this Act or the Service Use Tax Act, as the case may be, based on the fair market value of the property at the time the non-qualifying use occurs.

35 ILCS 105/3-5(23). See also 86 Ill. Adm. Code 150.332 & 130.2012.

A sublessee leasing tangible personal property to a governmental body does not qualify for the exemption contained in Section 3-5(23) and the corresponding rules. The exemption is limited to a lessor purchasing the property from the retailer and leasing the property to the governmental body. In this case, COMPANY1 is the party that purchased the property and COMPANY2 is the party that leased the property to the governmental body. COMPANY1 cannot claim the exemption contained in Section 3-5(23) of the Use Tax Act.

Temporary Storage Exemption.

The Use Tax Act does not apply to the use of tangible personal property in this State under the following circumstance:

The temporary storage, in this State, of tangible personal property that is acquired outside this State and that, after being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing, or shaping, and, as altered, is used solely outside this State.

35 ILCS 105/3-55(e); 86 Ill. Adm. Code 150.310(a)(4). "Because the temporary storage exemption is allowed for property used solely outside of the State, the taxpayer is limited to a single Illinois exempt use. *Shared Imaging, LLC*, 2017 IL App. (1st) 152817, ¶¶ 42-44. If, after the initial qualifying temporary storage in Illinois, the property is

returned here again and stored temporarily it is subject to use tax. *Id.*” *Safety-Kleen Systems, Inc. v. Illinois Department of Revenue*, Illinois Independent Tax Tribunal, 16 TT 167 (Sept. 16, 2018).

COMPANY1 has requested a ruling on whether the temporary storage exemption applies or not in 4 situations.

1. COMPANY1 initially delivered devices to COMPANY2 in Illinois; COMPANY2 provisioned, kitted and shipped the devices to AGENCY outside Illinois, and the devices never returned to Illinois (Group1);
2. COMPANY1 initially delivered devices to COMPANY2 in Illinois; COMPANY2 provisioned, kitted and shipped the devices to AGENCY outside Illinois; and AGENCY later returned the devices temporarily to COMPANY2 in Illinois for reprovisioning, rekitting, and reshipping to AGENCY outside Illinois (Group 2);
3. COMPANY1 initially delivered the devices to COMPANY2 in Illinois; COMPANY2 provisioned, kitted and shipped devices to AGENCY outside Illinois; and AGENCY later returned devices temporarily to COMPANY2 in Illinois that COMPANY2 intended to, and did, shortly thereafter purchase and resell to an unrelated third party (Group 3); and
4. COMPANY1 initially delivered devices to COMPANY2 in STATE1; COMPANY2 provisioned, kitted and shipped the devices to AGENCY outside Illinois; AGENCY returned the devices to COMPANY2 in Illinois for reprovisioning, rekitting and reshipping to AGENCY outside Illinois; and the devices never returned to Illinois (Group 4).

The devices in Group 1 qualify for the temporary storage exemption. The devices in Group 2 do not qualify for the temporary storage exemption because the devices were returned to Illinois. See *Safety-Kleen Systems, Inc.* at 7. COMPANY1 agrees Use Tax is due on the devices in Group 2. The devices in Group 3 also do not qualify for the temporary storage exemption because the devices were returned to Illinois. COMPANY1 claims the items were stored in Illinois prior to their subsequent sale and therefore are exempt. Storage is considered a taxable use, regardless of the purpose for which the devices are being stored or their subsequent disposition. Use Tax is owed on the devices in Groups 2 and 3 on the depreciated value of the devices at the time they were returned to Illinois. The devices in Group 4 qualify for the temporary storage exemption.

COMPANY1

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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 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

RSW:rkn