

ST 24-0043-GIL 12/13/2024 RETAILERS' OCCUPATION TAX

Effective January 1, 2025, retailers with a physical presence in Illinois who make sales that are sourced outside of this State to Illinois customers also incur State and local retailers' occupation tax at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. See 35 ILCS 120/2 as amended by Public Act 103-0983. Effective January 1, 2025, persons engaged in the business of leasing tangible personal property at retail ("lessors") in Illinois are subject to State and local retailers' occupation tax on the gross receipts from leases of tangible personal property made in the course of business. See 35 ILCS 120/2 as amended by Article 75 of Public Act 103-592.

December 13, 2024

NAME
COMPANY
EMAIL

Dear NAME:

This letter is in response to your email dated November 22, 2024, 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 <https://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:

[REDACTED]

We would like to inquire about the Illinois Department of Revenue's position on the upcoming tax changes related to the passing of S.B. 3362 and H.B. 4951.

S.B. 3362 - In light of the ILDOR FY 2025-10 publication, we would like to clarify the treatment of remote sellers without a substantial nexus in Illinois. Specifically, are remote sellers who do not meet the requirements to register for Retailers' Occupation Tax (ROT) still subject to voluntarily collect the 6.25% use tax?

H.B. 4951 - We have two questions related to the changes concerning leases:

- **Tax Collection on Leased Property**

Are lessors who paid tax upon acquisition of leased property prior to January 1, 2025, required to collect and remit tax on all lease payments received after January 1, 2025? If so, will the ILDOR provide an opportunity for a refund or credit?

- **Titled but Non-Registered Property**

In Article 75 of the bill, there is an addition to Section 1.05 of 35 ILCS 110 which specifies that motor vehicles, watercraft, aircraft and semitrailers are excluded from other leased tangible personal property and they will continue to be taxed "upfront." Prior to January 1, 2025, the tax was paid by the lessor at the time the leased property was purchased (upfront tax) for all tangible personal property, both titled and non-titled.

For the titled property listed above, it is our understanding that it will be subject to the lower tax on vehicles (State rate of 6.25% and applicable Metro-East/RTA district taxes), as well as the tax being collected "upfront", as opposed to collecting on the stream payments. However, the new provisions of the legislation also specify that this applies if the titled property is "required to be registered with an agency of this State." We are trying to determine if certain types of leased vehicles are (1) Subject to "upfront" tax and (2) Taxed at the lower motor vehicle tax rate if they are only titled, but do not have a registration requirement. A couple examples are All terrain vehicles (ATV's) and Off-Road Motorcycles.

DEPARTMENT'S RESPONSE:

Public Act 103-983

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.

A Remote Retailer is a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether that place of business or agent is located in Illinois permanently or temporarily or whether the retailer or subsidiary is licensed to do business in this State. A retailer that fulfills any orders from its inventory in Illinois is not a remote retailer. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105. As of January 1, 2021, a remote retailer is engaged in the occupation of selling at retail in Illinois for purposes of the Retailers’ Occupation Tax Act if either of the following thresholds is met:

- A) The cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
- B) The remote retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

See 35 ILCS 120/2(b); 86 Ill. Adm. Code 131.115. A remote retailer meeting either of these thresholds is liable for all applicable State and local retailers’ occupation taxes administered by the Department on all retail sales shipped or delivered to Illinois purchasers. See 86 Ill. Adm. Code 131.110(a); Section 131.115(a).

If a remote retailer meets either threshold, that retailer is deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. State and local retailers’ occupation taxes are incurred at the rate in effect at this location. See 86 Ill. Adm. Code 131.110(b).

Effective January 1, 2025, retailers with a physical presence in Illinois who make sales that are sourced outside of this State to Illinois customers also incur State and local retailers’ occupation tax at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. See 35 ILCS 120/2 as amended by Public Act 103-0983. These retailers maintaining a place of business in this State incur a Use Tax collection obligation on these sales through December 31, 2024.

Beginning January 1, 2025, if a retailer making sales into Illinois determines that, for the preceding 12-month period, it does not have physical presence in Illinois (does not meet the definition of “retailer maintaining a place of business in this State” as set out in 86 Ill. Adm. Code 150.201) and, pursuant to the criteria set out in Section 131.115, determines that its sales to Illinois purchasers did not meet either threshold, it is not required to remit State and local retailers’ occupation taxes. These remote retailers would also have no Use Tax collection obligation. However, these retailers may voluntarily register with the Department to collect and remit Use Tax as a courtesy to their Illinois purchasers, since those purchasers will still incur a Use Tax liability that they must otherwise self-assess and remit directly to the Department. See, for example, 86 Ill. Adm. Code 131.115(d).

Retailers making sales into Illinois who did not previously meet a threshold under Section 131.115 or the definition of “retailer maintaining a place of business in this State” and are therefore not required to remit State and local retailers’ occupation taxes must redetermine, on a rolling quarterly basis, whether they are obligated to begin remitting State and local retailers’ occupation taxes. See, for example, 86 Ill. Adm. Code 131.115(e). If the retailer meets either threshold in Section 131.115 or meets any of the criteria in the definition of “retailer maintaining a place of business in this State” for a 12-month period, it is a retailer engaged in the occupation of selling at retail at each Illinois location to which tangible personal property is shipped or delivered or at which possession is taken by the purchaser and is required to remit the Retailers’ Occupation Tax and all retailers’ occupation taxes imposed by local taxing jurisdictions in Illinois, provided the local taxes are administered by the Department, and to file all applicable returns for one year.

Public Act 103-592, Article 75

Effective January 1, 2025, in accordance with the provisions of Article 75 of Public Act 103-592, persons engaged in the business of leasing tangible personal property at retail (“lessors”) in Illinois are subject to State and local retailers’ occupation tax on the gross receipts from leases of tangible personal property made in the course of business. See 35 ILCS 120/2. A “lease” is defined as a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called, but does not include a lease entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee. On and after January 1, 2025, for purposes of State and local retailers’ occupation taxes, the term “sale” includes a lease. See 35 ILCS 120/1. The tax applies to lease receipts received on or after January 1, 2025 for leases in effect, entered into, or renewed on or after that date. The lessor must remit for each tax return period the tax applicable to lease receipts received during that tax return period. See 35 ILCS 120/2.

The inclusion of leases in the tax imposed under the Retailers' Occupation Tax Act by Article 75 of Public Act 103-592 does not, however, extend to motor vehicles, watercraft, aircraft, and semitrailers, as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State. The taxation of these items continues as prior to January 1, 2025 (i.e., dealers owe retailers' occupation tax, lessors owe use tax, and lessees of these items are not subject to retailers' occupation or use tax). On and after January 1, 2025, the tax on leases does, however, extend to trailers that are not semitrailers as defined in Section 1-187 of the Illinois Vehicle Code.

Beginning January 1, 2025, a sale to a lessor of tangible personal property who is subject to the tax on leases implemented by Article 75 of Public Act 103-592, for the purpose of leasing that property, shall be made tax-free on the ground of being a sale for resale if the purchaser has an active registration number or resale number from the Department and furnishes that number to the seller in connection with certifying to the seller that the sale to such purchaser is nontaxable because of being a sale for resale. See 35 ILCS 120/2c.

Article 75 of Public Act 103-592 makes no provision for a credit for Use Tax paid prior to January 1, 2025, by lessors when they acquired property for leasing purposes. Lessors may not reduce the Retailers' Occupation Tax owed on their gross receipts from leasing by any Use Tax they paid for leased property acquired prior to January 1, 2025. A lessor who incurs a Retailers' Occupation Tax liability on the sale of an item coming off lease, however, may take a credit against that liability for any Use Tax and any local retailers' occupation tax reimbursement the lessor paid to a supplier registered to collect Illinois tax when the lessor purchased that particular item. See 86 Ill. Adm. Code 130.2013(h).

Article 75 of Public Act 103-592 makes no changes with respect to the rate of tax imposed on tangible personal property. A leased item that is subject to tax on leases under this legislation for which tax is reported and paid on a transaction return (e.g., ST-556 or RUT-25) prior to January 1, 2025, will continue to be taxed at the vehicle rate on and after January 1, 2025, albeit on lease receipts. Generally, the lease tax provisions of Article 75 of Public Act 103-592 do not apply to items that are required to be registered with an agency of this State. The exception is that the tax on lease receipts applies to trailers, other than semitrailers as defined in Section 1-187 of the Illinois Vehicle Code, that are required to be registered with an agency of this State. With respect to items that are required to be titled with an agency of this State, but not required to be registered with an agency of this State, such as all-terrain vehicles (ATVs) and off-road motorcycles, the lease tax provisions of Article 75 of Public Act 103-592 also apply. These items may be purchased tax-free for resale if they will be subject to the tax on leases under the provisions of Article 75 of Public Act 103-592. Persons engaged in the business of leasing or renting these items must report and pay taxes on these items. For items that are required to be reported on a transaction return, lessors must use Form LSE-1 to report and pay tax on lease receipts, which form the

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Department is currently modifying to accommodate such reporting and payment. The Department will issue an Informational Bulletin and updated return instructions soon.

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at 800-732-8866.

Very truly yours,

Alexis K. Overstreet
Deputy General Counsel
Sales and Excise Tax Policy

AKO:slc