

If the true object of the transaction is the rental of space or providing an amusement, no tax is incurred on the charges for the space or the amusement. If no separate charge is made under the agreement for the incidental amount of tangible personal property provided, the renter is considered the user of the tangible personal property and incurs use tax on its cost price of the tangible personal property transferred incidentally to the purchase of space or an amusement and used in the course of using that space or partaking in that amusement. If a separate charge is made for any tangible personal property transferred by rental or lease incidentally to the rental of space or providing an amusement, the renter incurs retailers' occupation tax on the rental or lease price of the tangible personal property. See generally 86 Ill. Adm. Code 130.2145(e). (This is a GIL.)

March 12, 2025

NAME, TITLE
COMPANY
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your email dated February 6, 2025, 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 email you have stated and made inquiry, in relevant part, as follows:

I'd like to get clarification on some items we have that may qualify as rented property for the new sales tax requirement. We are a park district and have some unique rentals. We have already determined that we will be charging sales tax on our golf rentals.

1. What is the requirement for the rented property if the rental is part of a package?
 - Golf outing packages where the group pays a set amount and it includes rounds of golf and golf carts. Do we charge sales tax for the carts that are included in the package?
 - For room rentals, we have add-ons for equipment; including tvs, extension cords, easels, audio visual carts, coat racks, sound systems, pianos, LCD projectors, podiums, and tables. Does the tax apply to the room rental? Does the tax apply to the add-ons/equipment that go along with the room rental?
2. We have items that are rented as part of an experience.
 - GPS units are rented from our Marsh for self-guided geocache course programs. Do we need to determine if the patron is paying for the GPS unit rental or the course program, which includes the unit?
 - We have a mini golf course, clubs and balls are provided, patrons are paying for rounds of mini golf. Does sales tax apply?
3. Are facility rentals subject to sales tax? We rent spaces for weddings, rooms throughout the district and park pavilions. We also rent fields, gym space, battings cages, etc. for athletics.
4. Are locker rentals in the fitness center and aquatics centers taxable?

I have read the informational bulletin, are there any other resources that explains the leased or rented tangible personal property in more detail? If you have anything related to packages or experiences, please let me know. We want to ensure we are complying with the sales tax requirement as soon as possible.

Thank you for your assistance.

DEPARTMENT'S RESPONSE:

The Illinois 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. 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 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

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.

True Object

When tangible personal property is transferred as part of the rental of space or as part of providing an amusement, tax is due. The tax owed and the method to calculate the tax depend on two factors:

- (i) whether the tangible personal property is the true object of the transaction;
and
- (ii) how the tangible personal property is invoiced in the transaction.

The following paragraphs address these issues.

Regarding the rental of banquet and conference rooms, the Department has previously determined that if the true object of the transaction is the rental of the room and if food or beverages are provided incidentally to the rental of the room, no tax is incurred on the charges for the rental of the room. If no separate charge is made under the contract for the incidental amount of food or beverages provided, the renter is considered the user of the food or beverages and incurs use tax on its cost price of the food or beverages transferred incidentally to the rental of the room. If a separate charge is made for any food and beverages transferred incidentally to the rental of the room, the renter incurs retailers’ occupation tax on the selling price of the food or beverages. See 86 Ill. Adm. Code 130.2145(e). However, if the true object of the transaction is the sale of food or beverages, any room rental charges are part of the seller’s costs of doing business and are includable in the seller’s taxable gross receipts even if the charges for the room rental are separately stated on the agreement or bill between the seller and its customers. In the context of a room rental, the Department deems the providing of any food other than snacks to be the true object of the transaction and not the rental of the room. If alcoholic beverages are either provided or sold by the renter to the persons attending the event for which the room is

rented, the true object of the transaction will always be deemed the sale of food or beverages and not the rental of the room. The rental of the room in these circumstances is considered an inseparable link in the sale of the food and beverages to the customer and is not merely incidental to the seller's business of selling food or beverages. Therefore, charges for room rental are includable in the seller's taxable gross receipts. See 86 Ill. Adm. Code 130.2145(e).

This same test applies to rentals of tangible personal property incident to a rental of space or providing an amusement, e.g. batting cages, mini golf courses, bowling alleys, skating rinks, and golf courses. If the true object of the transaction is the rental of space or providing an amusement, no tax is incurred on the charges for the space or the amusement. If no separate charge is made under the agreement for the incidental amount of tangible personal property provided, the renter is considered the user of the tangible personal property and incurs use tax on its cost price of the tangible personal property transferred incidentally to the purchaser of space or an amusement and used in the course of using that space or partaking in that amusement. If a separate charge is made for any tangible personal property transferred by rental or lease incidentally to the rental of space or providing an amusement, the renter incurs retailers' occupation tax on the rental or lease price of the tangible personal property.

Inseparable Link

However, if the true object of the transaction is the lease or rental of tangible personal property, any space rental or amusement charges, if inseparably linked to the lease or rental of the tangible personal property, are part of the lessor's costs of doing business and are includable in the lessor's taxable gross receipts. This is true even if the charges for the space rental or amusement are separately stated on the agreement or bill between the lessor and its customers.

When an "inseparable link" exists between the lease of tangible personal property and related service charges, including delivery charges, the related service charges are part of the gross receipts subject to the Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.415(b)(1)(B)(i). An inseparable link exists when (a) the service charges are not separately identified to the lessee on the contract or invoice or (b) the service charges are separately identified to the lessee on the contract or invoice, but the lessor does not offer the lessee the option to lease the property without the payment of service charges added to the lease or rental price of an item (e.g., the lessor does not offer the lessee the option to lease the tangible personal property separately from the related service, or the lessor does not offer, or the lessee does not qualify for, a free service option). 86 Ill. Adm. Code 130.415(b)(1)(B)(ii). In contrast, if the lessee can rent or lease the tangible personal property without payment of service charges to the lessor, then an inseparable link does not exist,

and the service charges should not be included in the lease or rental price of the tangible personal property. 86 Ill. Adm. Code 130.415(b)(1)(B)(ii)-(iii).

The following example illustrates whether a service charge constitutes an inseparable link to rental or lease charges. A business offers guided kayak tours that include the rental of a kayak for the one-hour tour duration. Renters are encouraged to participate in the tour but are allowed to venture off on their own. The business requires tour participants to use the provided rented kayaks. The business does not offer rentals of kayaks independent of purchasing the tour. The kayak rental is the true object of the transaction since the tour could not be done without the kayak, but the kayak rental would still have value without the tour. The charge for the tour is inseparably linked to the rental charges for the kayak, regardless of if they are separately stated, as you cannot rent the kayak without the tour charge. As such, the entirety of the proceeds of the transaction is includable in the business's gross receipts and subject to tax. However, if the business were to offer independent kayak rentals in addition to kayak tours, the charge for the tour would not be inseparably linked to the rental charges for the kayak. In this instance, if the business separately states the charge for kayak rental from the charge for the tour on the business's invoice, the charges for the tour would not be includable in the business's gross receipts for retailers' occupation tax purposes and would be a nontaxable service charge.

Sales for Resale

A person who sells tangible personal property to a purchaser who may use or consume such property within the meaning of the Retailers' Occupation Tax Act, but who also may resell such property, must determine, at the time when he sells the property to such purchaser, whether the purchaser is buying the property "for use or consumption" within the meaning of the Act or whether the purchaser is buying the property "for resale". 86 Ill. Adm. Code 130.1401. 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. See 86 Ill. Adm. Code 130.1405 for Certificate of Resale requirements. Purchases for use or consumption may not be made tax-free for resale. If a retailer, including lessors beginning January 1, 2025, purchases an item that the retailer intends to use or consume as well as lease, that item may not be purchased tax-free for resale. If a lessor wants to avail themselves of the opportunity to make purchases tax-free for resale, such lessor could keep separate inventories based on items purchased tax-free for lease, the receipts for the lease of which will be subject to retailers' occupation tax, and items purchased tax-paid for use by the lessor. Tax-paid items include tangible personal property used by transferring it incident to the provision of an entertainment or amusement

COMPANY

Page 6

March 12, 2025

environment in which the object of the transaction is the entertainment or amusement environment and no separate charge is made for the tangible personal property.

Real Property

The tax on leases and rentals of tangible personal property does not extend to real property. For instance, room rentals, locker rentals, and storage facility rentals would not be taxed under Article 75 of Public Act 103-592. To the extent that property is installed as fixtures permanently attached to the realty on which they are located, such property is not considered tangible personal property and would not be subject to the new tax on leases and rentals of tangible personal property.

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 Overstreet
Deputy General Counsel

AKO:sce