

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. (This is a GIL).

March 24, 2025

NAME
COMPANY
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your email dated January 29, 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 as follows:

My client has asked me, and I need to be sure of the proper treatment of an issue. The client leases various kinds of machinery at retail and is now collecting the sales tax from its customers as instructed in the law. Some of this equipment will need some costly improvements/repairs in the near future. Of course, there will also be very common repair and maintenance done on the equipment as well. Will they need to pay the sales tax on the “costly” improvements/repairs going forward? It seems as though there would be a form of double taxation for this? Once for the improvements and again when the units are leased to the customers. A case could be made that the lease price subject to the tax is based upon the improved price of the equipment. Let me give you an [sic] quick example. A company that leases out skid-steers has to buy new tracks for their units (which are costly). This can

cost several thousands of dollars for each machine. Would they need to pay sales tax on these repairs? (keep in mind they don't have to change out the tracks on a regular basis)

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. This includes the extension of all exemptions from retailers' occupation tax and use tax to leases. See 35 ILCS 120/2-5. 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). Beginning 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 and 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.

"Semitrailer" is defined as "every vehicle without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and

so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.” 625 ILCS 5/1-187. All other trailers are subject to tax under Article 75 of Public Act 103-592. “Trailer” is defined as “every vehicle without motive power in operation, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.” 625 ILCS 5/1-209. If a trailer meets the definition of a “semitrailer”, it is not subject to sales tax on lease payments beginning January 1, 2025. However, if the trailer meets the definition of a “trailer”, it is subject to tax on lease payments. The difference is whether the trailer is constructed so that no part of its weight rests upon the towing vehicle.

Sale 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.

Repair or Replacement Parts

A lessor’s purchase of repair or replacement parts for the purpose of being attached to tangible personal property used solely for leasing or renting as a part thereof and subject to the tax on leases under Article 75 of Public Act 103-592, is exempt as a purchase for resale. However, if the same property is purchased by a lessee, the purchase is taxable.

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.

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Very truly yours,

Samuel J. Moore
Associate Counsel