

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 25, 2025

NAME, TITLE
COMPANY
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your letter dated March 13, 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 letter you have stated and made inquiry as follows:

I hope this letter finds you well. I am writing to you in regards to the recent notification that we received regarding Sales and Use Tax that applies to Leased or Rented Personal Property. I am writing to formally request that the Illinois Department of Revenue consider a redetermination of our sales tax rates for rentals outside of Chicago.

We are a local PRODUCT rental house that is based within Chicago. We currently charge the 11% Chicago Transaction Tax on all rentals that occur within the Chicago area. Prior to 01/01/25, rentals that occurred outside of the Chicago area were not subject to any tax. As I understand this new policy, we are now required to charge a tax on all rentals that occur within Illinois. The rate of tax is based on where the customer takes possession of our property.

- All payments and contracts are processed at our location in Chicago.
- Many of our customers are CUSTOMERS that rent equipment from our Chicago location and take it LOCATIONS throughout the United States. Just because we deliver to one location does not mean the equipment will stay in that municipality for the entire rental period.
- None of our rentals are subject to recurrent costs. All contracts are paid, confirmed, fulfilled and completed from our Chicago location.
- Our business is run on a proprietary software that manages all aspects of our business. From order-entry, invoicing, inventory management, etc. While we have the ability to track 2 or 3 taxing authorities, we do not have the ability to track hundreds of different tax rates. The costs to hire a programmer to augment our system would be extensive and expensive.
- We deliver our equipment all over the state. During our busy season, we can deliver to over 50 different locations in one day. The expectation to charge a different tax rate based on each municipality would be unduly burdensome. Then the requirement to input each delivery address into the Illinois Tax website for filing would require that we hire more personnel to complete these tasks. We are not financially prepared to bring on more staff. We currently lack the resources to comply with a complex destination-based system.
- Receiving notification on such a broad tax change with less then (sic) 24 hours notice to roll out has been excessively burdensome. We received this communication on 12/30/24 at 9:42pm for tax changes that would go in effect on 01/1/25.

We pride ourselves on being compliant with our tax responsibilities and are not looking to avoid them in any way. We are just looking for a solution that we know is accurate and manageable moving forward. We humbly request that we charge our taxes based on the origin rate instead of the destination rate. I feel confident that we can charge, collect, and track two tax rates. It's when we start looking at 103 different counties or 1300 municipalities it becomes impossible for us. I hope we can come to a mutually beneficial solution moving forward.

Thank you for considering this petition. I would be happy to provide any additional information or discuss this request further. I look forward to your response and am hopeful for a positive outcome.

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 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.

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.

Gross receipts from the lease of property that is subject to a tax on lease receipts imposed by a home rule unit of local government are exempt from the State and Department-administered local retailers' occupation taxes if the ordinance imposing the home rule tax was adopted prior to January 1, 2023. See 35 ILCS 120/2-5(49)(2) as added by Article 75 of Public Act 103-592. Specifically, gross receipts from the lease of property that is subject to Chicago's Personal Property Lease Transaction Tax are exempt from the State and Department-administered local retailers' occupation taxes. However, if the lease of this property would, but for this exemption, be subject to the tax on leases implemented by Article 75 of Public Act 103-592, then a sale to the lessor of this tangible personal property, for the purpose of leasing that property, shall be made State and local retailers' occupation tax-free as a sale for resale.

Sourcing

The lease of tangible personal property that is subject to the tax on leases under Article 75 of Public Act 103-592 is sourced as follows:

- i) For a lease that requires recurring periodic payments and for which the property is delivered to the lessee by the lessor, each periodic payment is sourced to the primary property location for each period covered by

the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

- ii) For all other leases, including a lease that does not require recurring periodic payments and any lease for which the lessee takes possession of the property at the lessor's place of business, the payment is sourced as otherwise provided under this Act for sales at retail other than leases.

See 35 ILCS 120/2-12(5.5) as amended by Article 75 of Public Act 103-592.

A lease requires recurring periodic payments if the lease agreement for the property provides for a fixed or indeterminate term and requires consideration to be broken into multiple payments due over the course of multiple return periods. If a lease agreement is fixed in duration and requires a single payment to be made in consideration for the lease of a specified item or items, the lease does not require recurring periodic payments.

Sourcing – Retail Leases

If a lease does not require recurring periodic payments, pursuant to 35 ILCS 120/2-12(5.5), the payment is sourced as otherwise provided under the Retailers' Occupation Tax Act. Because the tax is imposed on the retail business of selling and not on specific sales, the jurisdiction in which the sale takes place is not necessarily the jurisdiction where the retailers' occupation tax is owed. Rather, it is the jurisdiction where the seller is engaged in the business of selling that can impose the tax. *Automatic Voting Machs. v. Daley*, 409 Ill. 438, 447 (1951) ("In short, the tax is imposed on the "occupation" of the retailer and not upon the "sales" as such.") (citing *Mahon v. Nudelman*, 377 Ill. 331 (1941) and *Standard Oil Co. v. Dep't of Finance*, 383 Ill. 136 (1943)); see also *Young v. Hulman*, 39 Ill. 2d 219, 225 (1968) ("the retailers occupational tax...imposes liability upon the occupation of selling at retail and not on the sale itself"). See, for example, 86 Ill. Adm. Code 270.115(b)(1). The Illinois Department of Revenue has created administrative rules that govern the sourcing of local retailers' occupation taxes. See, for example, 86 Ill. Adm. Code 270.115. The rules provide that:

The occupation of selling is comprised of "the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the

purchase price”. *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Thus, establishing where “the taxable business of selling is being carried on” requires a fact-specific inquiry into the composite of activities that comprise the retailer’s business. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 32 (citing *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943)). 86 Ill. Adm. Code 270.115(b)(2).

Some retailers are engaged in retail operations with selling activities in multiple jurisdictions within the State, or in jurisdictions located in more than one state. The selling activities that comprise these businesses “are as varied as the methods which men select to carry on retail businesses.” *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321 (1943). Consequently, “it is...not possible to prescribe by definition which of the many activities must take place in [a jurisdiction] to constitute it an occupation conducted in [that jurisdiction] . . . It is necessary to determine each case according to the facts which reveal the method by which the business was conducted.” *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 321-22 (1943); see also *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraph 36. See, for example, 86 Ill. Adm. Code 270.115(b)(3).

A seller incurs Retailers’ Occupation Tax in a given taxing jurisdiction if its predominant and most important selling activities take place in that jurisdiction. Isolated or limited business activities within a jurisdiction do not constitute engaging in the business of selling in that jurisdiction when other more significant selling activities occur outside the jurisdiction, and the business predominantly takes advantage of government services provided by other jurisdictions. *Ex-Cell-O Corp. v. McKibbin*, 383 Ill. 316, 322- 23 (1943); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, paragraphs 30 through 35. See, for example, 86 Ill. Adm. Code 270.115(b)(5). The Department’s regulations enumerate several “primary selling activities” and “secondary selling activities” to aid in this inquiry, which are listed at 86 Ill. Adm. Code 270.115(c)(1) and (4). “Primary selling activities” include:

- A) Location of sales personnel exercising discretion and authority to solicit customers on behalf of a seller and to bind the seller to the sale;
- B) Location where the seller takes action that binds it to the sale, which may be acceptance of purchase orders, submission of offers subject to unilateral acceptance by the buyer, or other actions that bind the seller to that sale;
- C) The location where payment is tendered and received, or from which invoices are issued with respect to each sale;
- D) Location of inventory if tangible personal property that is sold is in the retailer’s inventory at the time of its sale or delivery; and

- E) The location of the retailer's headquarters, which is the principal place from which the business of selling tangible personal property is directed or managed. In general, this is the place at which the offices of the principal executives are located. When executive authority is located in multiple jurisdictions, the place of daily operational decision making is the headquarters.

See, for example, 86 Ill. Adm. Code 270.115(c)(1). If three primary selling activities occur in the same location, that is the jurisdiction where you are engaged in the business of selling. If the primary selling activities occur in multiple jurisdictions, but no individual jurisdiction has more than two primary selling activities, you must consider the listed secondary selling activities to determine the jurisdiction where you are engaged in the business of selling. "Secondary selling activities" include:

- A) Location where marketing and solicitation occur;
- B) Location where the seller engages in activities necessary to procure goods for sale;
- C) Location of the retailer's officers, executives or employees with authority to set prices or determine other terms of sale if determinations are made in a location different than that identified in subsection (c)(1)(A);
- D) Location where purchase orders or other contractual documents are received when purchase orders are accepted, processed or fulfilled in a location or locations different from where they are received;
- E) Location where title passes; and
- F) Location where the retailer displays goods to prospective customers, such as a showroom.

See 86 Ill. Adm. Code 270.115(c)(4).

Every retailer in this State must determine the taxing jurisdictions where it is engaged in the business of selling with respect to each of its sales by applying the standards set forth in Section 270.115(c), except when a retailer is engaged in particular selling activities identified by a statute that specifies the taxing jurisdiction where retailers engaged in those activities shall remit retailers' occupation tax. See 86 Ill. Adm. Code 270.115(c). If you are

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engaged in any special selling activity where your remittance of retailers' occupation tax would be directed by statute rather than these rules, please refer to the applicable statute.

Except as provided in subsection (d), a retailer that is not engaged in the business of selling in a jurisdiction under subsection (c)(2) is engaged in the business of selling in the jurisdiction where its inventory is located under subsection (c)(1)(D), or where its headquarters is located under subsection (c)(1)(E), whichever jurisdiction is the location where more selling activities occur, considering both primary and secondary selling activities. A retailer that is not engaged in the business of selling in a jurisdiction under subsection (c)(2) or (c)(5) is presumed to be engaged in the business of selling at the location of its headquarters absent clear and convincing evidence to the contrary. See 86 Ill. Adm. Code 270.115(c)(5) and (6).

If, for example, a retailer is engaged in the business of renting PRODUCT in the City of Chicago, then, if the rental of a PRODUCT is subject to the Chicago Personal Property Lease Transaction Tax, the rental is exempt from Illinois Retailers' Occupation Tax and locally imposed retailers' occupation taxes administered by the Illinois Department of Revenue, (i.e., Chicago's Home Rule Municipal Retailers' Occupation Tax, Cook County's Home Rule County Retailers' Occupation Tax Act, and the Regional Transportation Authority Retailers' Occupation Tax). If, however, the rental is not subject to Chicago's Personal Property Lease Transaction Tax, then it is subject to State and local retailers' occupation taxes. In that case, if the rental contract requires recurring periodic payments and the PRODUCT is delivered to the rental customer, then the rate of tax on each periodic payment is the rate in effect at the primary property location for each period covered by the payment. If the rental contract does not require recurring periodic payments, or if the PRODUCT is not delivered to the customer, then the rate of tax is determined by the State and local retailers' occupation tax rate in effect at the location where the primary selling activities occur as listed above (or as otherwise provided above if less than three primary selling activities occur in one location).

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

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