

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.)

April 7, 2025

NAME, TITLE  
COMPANY  
ADDRESS

Dear NAME:

This letter is in response to your letter dated February 10, 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:

COMPANY is a material and equipment provider within STATE with the primary course of business renting and selling tangible personal property to various contractors around the nation. This includes frequent transactions to supply rental equipment and/or materials and purchases of tangible personal property to contractors within the State of Illinois for use or incorporation into realty during the performance of a contract on various projects, including but not limited to projects under exempt entity ownership such as IDOT.

Until recently, COMPANY remitted Use Tax whereby rentals into the state were non-taxable. Effective Jan 1, 2025, our taxing status was changed to Retailers Occupation Tax (ROT) and rentals of TPP became taxable.

To better understand and clarify which transactions should be imposed sales tax, could you please advise on the following questions:

1. Are rentals and/or sales of tangible personal property to a contractor for use or incorporation into realty during the performance of a contract under an exempt entity ownership project exempt from sales tax?
2. If so, what documentation should be provided by the contractor, exempt entity, and retained on file by the seller to provide sufficient proof of exemption status at the time of the transaction?
3. Other than exempt entities, are there any other exceptions that could qualify for an exempt status in relation to rented and/or purchased tangible personal property in the State of Illinois?

**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. For retail leases, tax is due at the lessor's State and local retailers' occupation tax rate based on where the lease is sourced. See 35 ILCS 120/2-12(5.5).

The exemptions from tax under the Retailers' Occupation Tax Act apply to leases of tangible personal property in the same manner as the exemptions apply to other sales under the Act and are found at Section 130.120 of Title 86 of the Administrative Code. See 86 Ill.

Adm. Code 130.120. Sales to exempt organizations (organizations that qualify as exclusively religious, charitable, or educational) and governmental entities are subject to tax unless the exempt organization or governmental entity has obtained an active exemption identification number (“E” number) from the Department. See 86 Ill. Adm. Code 130.2007 and 130.2080. Persons or businesses selling tangible personal property to these organizations or governmental entities must be provided with an “E” number for the sales to be tax exempt, unless another exemption can be documented. It is important to note that only sales of tangible personal property invoiced to the organization or governmental entity itself are exempt. Sales made to an individual member or client of an exempt organization or entity are generally subject to tax.

If a person or business is contractually required to purchase tangible personal property for incorporation into real estate, then that person or business would be acting as a construction contractor. Construction contractors in Illinois are deemed to be the end users of tangible personal property purchased for incorporation into real property and owe Use Tax on those materials. 86 Ill. Adm. Code 130.2075. However, purchases of tangible personal property by a construction contractor for incorporation into the real estate owned by an exempt organization or governmental entity that possesses a valid “E” number at the time of sale may be made free of Illinois Retailers’ Occupation Tax and Use Tax under the provisions of 86 Ill. Adm. Code 130.2075(d).

In claiming the exemption from tax, the construction contractor must provide its supplier with a certification stating that its purchases are for conversion into real estate under a contract with an exempt organization or governmental entity, identifying the organization or entity by name and address and stating on what date the contract was entered into. The construction contractor must also provide the “E” number issued by the Department to the organization or entity for which the purchasing contractor is acting. See 86 Ill. Adm. Code 130.2075(d)(4).

If, however, an item is not incorporated into real estate owned by an exempt organization or governmental entity as provided above, but is instead used by the construction contractor, then it is not eligible for the exemption.

#### 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-

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592, for the purpose of exclusively 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 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.

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,

A handwritten signature in black ink that reads "Samuel J. Moore". The signature is written in a cursive style with a large, stylized initial "S".

Samuel J. Moore  
Associate Counsel

SJM:sce