

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. See 86 Ill. Adm. Code 130.220 and 130.2010. (This is a GIL.)

October 16, 2009

Dear Xxxxx:

This letter is in response to your letter dated February 26, 2009, in which you request 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 www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

In your letter you have stated and made inquiry as follows:

This letter is in response to our telephone conversation on December 2, 2008, in regard to when and to whom BUSINESS, will need to pay the Retailer's [sic] Occupation Tax and the Use Tax on portable storage buildings that BUSINESS rents to individuals and businesses. There are three (3) basic rental scenarios:

1. Portable storage buildings that are rented to individuals or businesses who live in various taxing districts throughout the State of Illinois;
2. Portable storage buildings that are rented to individuals or businesses who live in Indiana; and,
3. Portable storage buildings that are rented to individuals or businesses who live in Kentucky.

From my research, it would appear that BUSINESS's operations would qualify BUSINESS's purchases of the portable storage buildings from the building's manufacturers and BUSINESS's subsequent renting of the portable storage buildings as 'Purchases of Tangible Personal Property for Rental' pursuant to Title 86, Part 130, Section 130.2013 of the Illinois Administrative Code.

In order to obtain a Private Letter Ruling, the following information is being provided as required by Title 2, SUBTITLE D, Chapter XXI, Part 1200, Section 1200.110(b):

1. BUSINESS, was organized on July 22, 2008, and began operations in September 2008. BUSINESS's only office is located in CITY, Illinois. BUSINESS's sole business consists of renting portable storage buildings to individuals and business throughout Illinois, STATES. Currently, BUSINESS has relations with two (2) manufacturers that build portable storage buildings. One manufacturer is located in rural ABC County, Illinois, and the other manufacturer is located in rural XYZ County, Illinois. BUSINESS has no ownership interest in, nor control over, either manufacturer. One of the manufacturer's [sic] has dealers located in Illinois and STATE and the other manufacturer has dealers located in Illinois and STATE. BUSINESS has no ownership interest in, nor control over, any of the dealers.

When an individual elects to rent a portable storage building rather than buy a portable storage building, the dealer (1) has the renter fill out and sign a rental agreement that has been provided to the dealer by BUSINESS, (2) fax a copy of the agreement to BUSINESS for ultimate approval and (3) the dealer then returns the original agreement, along with the first month's rental payment and any security deposit, if applicable, to BUSINESS for BUSINESS's execution and final acceptance. Once BUSINESS accepts the agreement, BUSINESS purchases the portable storage building from the manufacturer and mails a fully signed copy of the agreement to the renter. BUSINESS remits payments to the manufacturers on monthly basis. After the portable storage building is purchased, the portable storage building is deemed rental inventory on BUSINESS's books and the portable storage buildings are depreciated as such.

At this time BUSINESS has not been required to file its tax returns with the Department of Revenue but BUSINESS intends to self-assess and pay the Use Tax directly to the Department. Additionally, BUSINESS believes that, pursuant to Title 86, Part 130, Section 130.220(a), BUSINESS is a purchaser who will act as a lessor and intends to self-asses and pay the Retailer's [sic] Occupation Tax directly to the Department. BUSINESS intends to self-assess both taxes on a monthly basis based upon the monthly remittance to the manufacturers.

In regard to the rental renewal term, a renter is required to rent the portable storage building for a minimum of four (4) months. After four (4) months, the renter has the absolute right to terminate the rental agreement and BUSINESS has no option but to pick up and retake possession of the portable storage building. If a renter elects to terminate the agreement, BUSINESS picks up the portable storage building and returns it to the dealer where the portable storage building was originally rented and the portable storage building is then re-offered for rent.

2. The following documents are being provided: Renter's Disclosure/ Application, Rental Agreement and Receipt for Security Deposit and First Advance Monthly Rental Renewal Payment
3. The tax period at issue will be the first tax period in which BUSINESS owes taxes. BUSINESS does not have any audit or litigation pending with the Department.

4. BUSINESS represents that the Department has not previously ruled on this nor any similar issue for BUSINESS or one of BUSINESS's predecessor(s) actually, BUSINESS has no predecessors). Additionally, neither BUSINESS nor any of its representatives have submitted the same or a similar issue to the Department; nor has such a request been withdrawn before a letter ruling was issued.
5. BUSINESS has no authority other than the administrative rules cited above.
6. Title 86, Part 130, Section 130.2010 and several General Information Letters would appear to conflict with BUSINESS's view; however, BUSINESS contends that Title 86, Part 130, Section 130.2010 and the General Information Letters are not on point factually. BUSINESS's rentals are not 'conditional sales'. The 'nominal purchase at the close of the lease term' language contained in the agreement is required by the Rental-Purchase Agreement Act, 865 ILCS 655, so that, presumably, the transaction does not violate or conflict with the Retail Installment Sales Act, 865 ILCS 405, the Consumer Leasing Act, 15 U.S.C. 667, and/or the Truth in Lending Act, 15 U.S.C. 1601. Under no circumstance can BUSINESS force a renter to buy the portable storage building. After four (4) months the renter has the absolute right, at anytime, [sic] to terminate the rental agreement and make BUSINESS retake possession of the building. More importantly, the renter also has the absolute right to elect to purchase the portable storage building, in at any time, during the term of the agreement, including the initial four (4) month period, based upon the 'cash price' NOT the 'Total Acquisition Cost'.
7. No trade secret information is being requested deleted.
8. The members of BUSINESS, have signed below.

In conclusion, BUSINESS hopes that the Department determines that BUSINESS can self-assess and pay the Use Tax directly to the State of Illinois based upon the monthly remittance to the manufacturers and BUSINESS's principal place of business being located in CITY, ABC County, Illinois; and, that the Department determines that BUSINESS can self-assess and pay the Retailer's [sic] Occupation Tax to the State of Illinois based upon the monthly remittance to the manufacturers and BUSINESS's principal place of business being located in CITY, ABC County, Illinois.

Since BUSINESS will need to file tax returns and pay sales to STATES in the very near future if BUSINESS does not receive a ruling from the Department that the sales tax on the buildings that BUSINESS purchases is due to the State of Illinois, your earliest attention to this matter would be greatly appreciated.

Thank you for your time and consideration and if you need any additionally [sic] information, please feel free to contact us at your convenience.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm.

Code 1200.110(a)(4). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope, however, the following will be helpful in addressing your questions.

Retailers' Occupation Tax and Use Tax

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.

Leases

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Under Illinois law, lessors may not "pass through" their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a **reimbursement** of the tax to be paid by the lessees. If lessors and lessees have made private agreements where the lessees agree to reimburse the lessors for the amount of the tax paid, then the lessees are obligated to fulfill the terms of the private contractual agreements.

A lease agreement that does not guarantee a sale of the leased tangible personal property at the inception of the contract is not considered a conditional sales agreement. As a result, the lessor under such an agreement would be deemed to be the end user of the leased property and would be required to remit Use Tax to the Department based upon the cost price of the tangible personal property. Please note, as pointed out above, lessors may not pass through their tax obligation to the lessees as taxes. Lessor can, though, seek reimbursement from the lessees pursuant to a separate agreement for reimbursement.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M. Boggess
Associate Counsel

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