

With regard to modifications to a motor vehicle for the purpose of rendering it usable by a disabled person, the tax is imposed at the rate of 1%. See 86 Ill. Adm. Code 130.310(e). (This is a GIL.)

September 28, 2009

Dear Xxxxx:

This letter is in response to your letter dated November 6, 2008, 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.

Whether to issue a Private Letter Ruling in response to a request for such a ruling is within the discretion of the Department. See subpart (a)(4) of 2 Ill. Adm. Code 1200.110. The Private Letter Ruling Committee has decided that it will not issue a Private Letter Ruling in regards to your request. The Committee believes that the response to your question should instead be provided in the context of a General Information Letter. In your letter you have stated and made inquiry as follows:

Please find enclosed a Request for Private Letter Ruling for COMPANY.

If you have any questions or comments, please feel free to call me. Thank you.

Your Request for a Private Letter Ruling states as follows:

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Telephone#:

Taxpayer's Federal Tax ID#:

Taxpayer's IL Department of Revenue License#:

Type of Tax at Issue:

Retailer's [sic] Occupation
Tax

Tax Period at Issue:

2008 and Beyond

AUTHORITY

A letter ruling is requested pursuant to 2 Illinois Administrative Code 1200.110

ISSUE

Are the Taxpayer's sales of separately invoiced Wheelchair Platform Lifts, Door Operating Systems, Wheelchair and Scooter Stowage Lifts, Hand Controls, Chair Toppers, Roof Racks, Seats, Securement Systems, Lowered Floors, and other parts and equipment used to aid disabled persons in the use of motor vehicles subject the lower rate of the Illinois Retailer's [sic] Occupation Tax?

Are the Taxpayer's leasing of Wheelchair Accessible Vans, Portable Ramps, and Hand Controls to aid disabled persons in the use of motor vehicles subject to the lower rate of the Illinois Retailer's [sic] Occupation Tax?

STATEMENT OF RELEVANT FACTS

Taxpayer is a foreign limited liability company in the business of selling vans that have been modified for handicapped accessibility and use by disabled persons. The Taxpayer also separately sells parts and services used to modify motor vehicles to make them handicapped accessible and user friendly for disabled persons.

Specifically, the Taxpayer sells and installs Wheelchair Platform Lifts, which are used to lift wheelchair-using disabled persons into a motor vehicle.

The Taxpayer sells and installs Door Operating Systems, which help disabled persons with ingress and egress into and out of a motor vehicle and provide a broader area for entrance and exit.

The Taxpayer sells and installs Wheelchair and Scooter Stowage Lifts, which are devices used to lift and stow away wheelchairs and scooters in the rear or trunk space of motor vehicles.

The Taxpayer sells, installs, and leases Hand Controls which allow disabled persons to brake, accelerate, and otherwise operate a motor vehicle using their hands as opposed to their feet.

The Taxpayer sells and installs Securement Systems that provide for the security and restraint of wheelchairs and other mobility equipment while contained in a vehicle.

The Taxpayer sells and installs Special Chairs, Seats, and Roof Racks, which are custom devices used for the convenience of disabled persons while using a motor vehicle.

The Taxpayer sells and installs Lowered Floors in motor vehicles to allow for greater vertical space for handicapped users.

In addition, the Taxpayer sells and installs the following modifications to vehicles for use by disabled individuals: Air Bag Switches, Driver Training Brakes, Left Foot Gas Pedal, Pedal Guards, Spinner Knobs, Turn Signal Crossover Switches, Horn Button, Remote Controls, Grab Handles, Ramps, Handy Bars, Electronic Driving Controls, Low Effort Steering/Brakes, Back Up Cameras, Panoramic Mirrors, Back Up Sensors, Torso Belts, Portable Ramps, Van Mounted Ramps, Trailer Hitches for Wheelchair Carriers, Power Step, Remote Start, Batteries for Accessible Equipment, Battery Buddies, Trickle Chargers, Extended Service Plans for Equipment and Chassis, Raised Roofs, Raised Doors, Suspension Kits, Roof Reinforcements, Leather Upgrade to seats to aid in Transfers, High Tech Labor Electronic Driving Controls, Door Motors, Ramp Motors, Switches, Relays, Ground Effects, Circuit Breakers, Modules, Hinges, Wire, Harnesses, Schleps, Ramp/Lift Chains, Fuses, Buckles, Brackets, Hydraulic Cylinders, Door Opener Assemblies, Motors, Weldments, Pumps, Power Doors, Kneeling Systems, Remote Entry, Tumble Forward Seats, Magnetic Entry, and Jump Seat/ Flip down Seats.

The Taxpayer is also in the business of renting and leasing Wheelchair Accessible Vans, and Controls, and Portable Ramps for ingress and egress into motor vehicles.

ANALYSIS

Based upon the Taxpayer's reading of 35 ILCS 120/2-10, the sale, installation, rental, and leasing of the above mentioned equipment should qualify for the 1% tax as opposed to the 6.25% tax. The equipment is sold, installed, rented, or leased to disabled individuals for the purpose of aiding them in the use of their motor vehicles.

STATEMENT OF AUTHORITY SUPPORTING TAXPAYER'S POSITION

The Taxpayer desires to have the sale and installation of any and all equipment used to modify motor vehicles to make them accessible and more user friendly for handicapped persons to qualify for the lower rate of tax under the Illinois Retailer's [sic] Occupation Tax, pursuant to 35 ILCS 120/2-10.

The Taxpayer also desires to have the leasing and rental of equipment used to modify motor vehicles or to make them handicapped accessible and more user friendly for disabled persons to qualify for the lower rate of tax under the Illinois Retailer's [sic] Occupation Tax, pursuant to 35 ILCS 120/2-10.

STATEMENT REGARDING PREVIOUS RULINGS

To the best of the knowledge of the Taxpayer, the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor

STATEMENT OF CONTRARY AUTHORITY

The Taxpayer was unable to locate any contrary authority to its position.

STATEMENT REGARDING PENDING AUDIT/LITIGATION

The Taxpayer is not presently under investigation or audit for the specific issue discussed in this request.

DEPARTMENT'S RESPONSE:

Section 2-10 of the Retailers' Occupation Tax Act provides that "[w]ith respect to . . . modifications to a motor vehicle for the purpose of rendering it usable by a disabled person . . . the tax shall be imposed at the rate of 1%." (See 35 ILCS 120/2-10). Section 130.310(e) of the Illinois Department of Revenue's administrative rules further explains the application of this statutory language (86 Ill. Adm. Code 130.310(e)). It states, in part, that "[t]he low rate applies to modifications that enable a disabled person to drive a vehicle, or that assist in the transportation of disabled persons. Examples of such modifications include, but are not limited to, special steering, braking, shifting, or acceleration equipment, or equipment that modifies the vehicle for accessibility, such as a chair lift." Consequently, hand controls that allow disabled persons to brake, accelerate, and otherwise operate a motor vehicle using their hands as opposed to their feet would qualify for the low rate of tax. In addition, wheelchair platform lifts and door operating systems installed in motor vehicles in order to render the vehicles usable by disabled persons would qualify for the low rate of tax.

On the other hand, wheelchair and scooter stowage lifts used to lift and stow away wheelchairs and scooters in the rear or trunk space of a motor vehicle do not constitute modifications to a motor vehicle for the purpose of rendering the vehicle usable by a disabled person. That is because these neither enable a disabled person to drive a vehicle nor do they assist in the transportation of the disabled person; rather they assist in the transportation of the equipment.

In your letter you provided a list of various items that you feel qualify for the reduced sales tax rate of 1% (plus applicable local taxes) for modifications to a motor vehicle for the purpose of rendering it usable by a disabled person. An item qualifies as a modification to a motor vehicle for the purpose of rendering it usable by a disabled person because of the use to which it is put, not because of the nature of the item itself. It is important to note that the reduced rate applies only to those modifications that are made for the purpose of rendering the vehicle usable by a disabled person. To the extent a modification is made that is not for the purpose of rendering it usable by a disabled person, then it is not eligible for the reduced rate. Some items that may or may not qualify for the reduced rate of tax, depending on how they are used, are, for example, back up mirrors, panoramic mirrors, back up sensors, trailer hitches, suspension kits, and leather upgrades. With this in mind, it is important to keep records adequate to substantiate the purpose for the modification.

Your letter indicates that you also sell vans that have been modified for handicapped accessibility and use by disabled persons. Please note that the selling price of a vehicle that has previously been modified to make it usable by a disabled person is subject to the general merchandise rate of tax in this State (6.25% plus any applicable local taxes).

You also asked about the leasing or rental of wheelchair accessible vans, hand controls, and portable ramps to aid disabled persons in the use of motor vehicles. The renting of a motor vehicle for a period of one year or less is subject to the Automobile Renting Occupation and Use Tax Act at the rate of 5%. See 35 ILCS 155/1 et seq. If a person rents motor vehicles of the second division that are of the van configuration designed for the transportation of not less than 7 nor more than 16 passengers, as defined in Section 1-146 of the Illinois Vehicle Code, then that person is subject to the Automobile Renting Occupation and Use Tax Act. There are no exemptions or rate reductions in that Act for the rental of such vans that have been modified for the purpose of rendering them usable by disabled persons.

With respect to the rental of items other than motor vehicles for any period of time and the rental of motor vehicles for a period greater than one year, 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.

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 a result, the purchase of wheelchair accessible vans for lease for greater than one year, and hand controls and portable ramps for lease for any length of time is taxable to the purchaser/lessor and the lessee is not taxable upon the lease of these items. If a lessor purchases the parts to modify a van to make it wheelchair accessible and thereafter leases that van, the purchase of the parts to make the modifications would be subject to the low rate of tax.

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.

Sincerely,

Samuel J. Moore
Associate Counsel