

The Retailers' Occupation Tax rate charged on the sale of a motor vehicle in Illinois depends on the rate of tax imposed on the retailer where the sale occurs. See 86 Ill. Adm. Code 130.101. For State-administered tax purposes, sales and use taxes do not apply to lease receipts. Lessors of motor vehicles for a term of more than one year in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. The one exception is the short-term rental of automobiles. See 86 Ill. Adm. Code 180.101. (This is a GIL.)

August 28, 2015

Dear Mr. XXXX:

This letter is in response to your complaint to the Attorney General's Office which was referred to us on July 22, 2015, 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.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your complaint to the Attorney General's Office, in relevant part, you have stated and made inquiry as follows:

The third item I asserted in my original complaint was the issue of sales tax on the transaction. I see in the lease, \$3729.00 was passed through to me. That comes up to 9.6% sales tax. I calculate the total sales tax should have been \$2798.50 at a rate 7.25%. My portion as reported on IDR form ST-556-LSE, was \$311.00, leaving the remainder that could be passed back though to me by the lessor, of \$2487.50.

1. Is this the proper forum to address this, or was it forward to the Illinois Department of Revenue?
2. If this is the correct forum, and my interpretation of the tax and/or accounting rules are correct, I believe the \$930.50 should be refunded to me.

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.

For sales occurring in Illinois, the sales tax rate charged on the sale of a motor vehicle depends on the rate of tax imposed on the retailer where the sale occurs. The sales tax rate on motor vehicles sold in CITY, Illinois is 7.25% of the selling price of the vehicle. This rate consists of the State Retailers' Occupation Tax rate of 6.25% plus a 1% Regional Transportation Authority Retailers' Occupation Tax.

Motor Vehicle Leases:

With respect to leases, however, it is important to understand that the State of Illinois does not impose a tax on the lease of a motor vehicle for a term of more than one year (the lease or rental of an automobile for a term of one year or less, however, is subject to the Automobile Renting Occupation and Use Tax. See 35 ILCS 155/1 et seq. and 86 Ill. Adm. Code 180.101). Consequently, with respect to Department-administered taxes, lessees of motor vehicles for a term of more than one year incur no tax liability. Lessors of motor vehicles for a term of more than one year in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of the property located in Illinois, lessors owe Use Tax on the selling price of such property. However, it is typical of such leases to contain contractual provisions stating that the lessees will *reimburse* the lessors for their tax costs. This is not a matter of Illinois tax law but of a private agreement between lessors and lessees. If the lessee agrees to such provisions, he or she is bound to satisfy that duty because of a contractual agreement, not because of Illinois tax law.

When determining the Use Tax owed by the lessor of a motor vehicle, which the lessee may have a contractual obligation to reimburse, please note that, effective January 1, 2015, Public Act 98-628 changed the definition of "selling price" on which tax is measured for many situations in which a motor vehicle is sold to a lessor to be leased. For qualifying motor vehicles sold for the purpose of being leased for a defined period that exceeds one year, the taxable selling price is now the amount paid under the lease contract rather than the amount that the leasing company pays to the motor vehicle dealer to purchase the car. The "selling price" on which tax is measured for these qualifying leases is typically the amount found in a box on the lease contract captioned "Total of Payments." In most cases, the tax amount is less than the amount charged in these transactions prior to January 1, 2015. Motor vehicles that qualify under P.A. 98-628 are all first division motor vehicles and certain second division motor vehicles. For more information, see Informational Bulletin FY 2015-03 "Leased Motor Vehicle Changes and New Reporting Requirements."

Although the State of Illinois does not tax leases other than short-term rentals of motor vehicles discussed above, it is also important to note that some jurisdictions impose a tax on lease transactions that is administered by the local taxing jurisdiction. In addition, some local jurisdictions may impose a local use tax on motor vehicles registered in that jurisdiction, which tax is administered by that local jurisdiction. To determine whether such a local lease tax or use tax is imposed, please contact the local jurisdiction where the vehicle is registered.

Claims for Credit:

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. See 86 Ill. Adm. Code 130.1501. Please note that only persons who have actually paid tax to the Department can file a claim for credit. No credit shall be given the taxpayer unless the taxpayer shows that he or she has borne the burden of the tax or has unconditionally repaid the amount of the tax to the purchaser from whom it was collected. In other words, if a purchaser has paid tax to his supplier/retailer, only that supplier/retailer can file a claim for credit.

The supplier must first refund tax money paid by the purchaser before proceeding with the claim. Once the supplier has done this, he or she must apply for the credit in the manner described in the regulation. Suppliers/retailers are not required by law to apply for such credits; rather, this procedure is voluntary. Whether or not the supplier refunds the tax paid and files a claim for credit with the Department is a private matter between the supplier and the purchaser.

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,

Samuel J. Moore
Associate Counsel

SJM:mdb

Cc: Consumer Protection Division
Office of the Attorney General