

This letter references the taxpayer to the rolling stock exemption regulation. See 86 Ill. Adm. Code 130.340. (This is a GIL.)

September 8, 2006

Dear Xxxxx:

This letter is in response to your letter dated January 23, 2006, 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.ILTAX.com 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:

This Request for General Information Letter relating to Illinois Retailers [sic] Occupation Tax and Use Tax is being submitted on behalf of our client, an existing corporation (hereinafter referred to as the 'Corporation') pursuant to 2 Ill. Adm. Code 1200.120. The facts are as follows:

Corporation's principal offices are located in Illinois. Corporation will form a wholly owned subsidiary limited liability company (the 'Lessee') that will enter into a dry lease (the 'Lease') of an aircraft (the 'Aircraft') from the owner thereof (the 'Lessor'). The lease will be a 'true lease' with rent being paid at fair market rates thereunder and no buy out provision at the end of the Lease term. The Aircraft will be hangared in Illinois during the Lease term. The Lease will have a term of thirteen (13) months.

The Lessee will in turn sublease the Aircraft (the 'Sublease') to an interstate carrier (the 'Sublessee') that holds a certificate issued by the Federal Aviation Administration ('FAA') under Part 119 of the Federal Aviation Regulations. The Sublessee will regularly and frequently use the Aircraft as rolling stock in transporting persons or property for hire in interstate commerce by chartering the Aircraft to the Corporation for use by it and its employees, and by chartering the Aircraft to individuals who are shareholders of the Corporation. The term of the Sublease will be identical to the term of the Lease (13 months) and will be effective as of the effective date of the Lease and prior to the entry

of the Aircraft into Illinois. The rent to be paid under the Sublease will be at fair market rates.

The Lessee will have the right to terminate the Lease and Sublease prior to the end of each of their terms for cause. However, if this occurs, the Aircraft would either be removed from Illinois prior to any such termination of the Lease or the Sublease or a new sublease with a new sublessee (that holds a Part 119 certificate) would be entered into concurrent with the Sublease termination. Any such replacement sublease would have a term equal in length to the remainder of the original 13 month term of the terminated Sublease.

The Lessor will file, as applicable, either a Form RUT-25, Use Tax Transaction Return, or a Form RUT-75, Aircraft/Watercraft Use Tax Transaction Return, depending on the Lessor's status as a dealer or casual seller, together with a Form RUT-7, Rolling Stock Certification, no later than 30 days after the date the Aircraft is brought into Illinois.

Based on the foregoing, please provide a General Information Letter pursuant to 2 Ill. Code 1200.120 with written answers to the following:

1. Please confirm that, based on all of the facts set forth above, the 'rolling stock exemption' ('RSE') from Illinois Retailers [sic] Occupation Tax ('ROT') and Use Tax ('UT') will apply to the Lease and Sublease and that therefore neither the Lessor nor the Lessee will be subject to ROT or UT with respect to the Aircraft and the Lease and Sublease thereof.
2. Whether, assuming that the answer to Issue 1 is in the affirmative, the fact that the Sublessee will charter the Aircraft only to the Corporation and its employees and individuals who are shareholders of the Corporation has any effect on such answer.
3. Whether, assuming that the answer to Issue 1 is in the affirmative, such answer will be affected in any way if the Aircraft has not been added to the Certificate on the date of entry of the Aircraft into Illinois (continuing until such time as the Aircraft is added pursuant to the usual and customary timetable of the FAA and the Sublessee) and that, therefore, flights of the Aircraft are conducted under FAR Part 91 in the interim period.
4. Whether, assuming that the answer to Issue 1 is in the affirmative, the RSE will continue to apply to the Lessor and the Lease if the Lessee were to terminate the Sublease for cause prior to the end of the term thereof and promptly enter into a subsequent sublease for the remainder of the original 13 month term of the Sublease with another carrier that holds an [sic] FAR Part 119 certificate.

I look forward to reviewing your reply to this request. In the event you have any questions or need further information, please contact me.

DEPARTMENT'S RESPONSE

We regret that we cannot provide you with a specific answer in the context of a General Information Letter. Information regarding rolling stock moving in interstate commerce may be found at 86 Ill. Adm. Code 130.340. In general, an arms length transaction for lease to a related but separate legal entity for transportation of persons or property for hire will not prohibit a party from claiming the rolling stock exemption as long as all other conditions are met.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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