

This letter refers to ST 06-0201-GIL regarding leases and conditional sales. (This is a GIL.)

July 3, 2007

Dear Xxxxx:

This letter is in response to your letter dated October 10, 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](http://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:

I am requesting clarification of a recent General Information Letter dated September 26, 2006 from Martha Mote regarding the taxability (sales/use/retailers occupational) of a financing transaction originally classified as a sale/leaseback on my original request dated May 30, 2006. I spoke with Martha today and she suggested I request a clarification to speed up the process.

**Facts:**

Company A is a for profit company that contracts with school districts to provide contract bus services. Company A purchases school buses from the manufacturer for use in Illinois. Upon bringing the school buses into the State of Illinois, Company A pays use tax using form RUT-25 Motor Vehicle Use Tax Return before the first functional use of the buses and within 90 days of the original purchase. After the buses are registered in Company A's name, Company A seeks to recoup the funds used to purchase the buses for use in operating and growing the company. Company A accomplishes this by borrowing money against the buses (capital assets) from Company B. To effectuate the loan, Company B obtains a first lien against the school buses. Once Company A successfully pays off the note, Company B releases the lien. No buyout or nominal fees required.

**Request for clarification:**

- (1) Are the payments associated with paying the loan considered a lease?
- (2) Are the payments associated with paying the loan considered a conditional sale?
- (3) Would the payments associated with paying the loan be subject to sales, use or retailers occupational tax?
- (4) Would the placement of Company B as first lien holder be considered a conditional sale? If yes, would the sale be considered an occasional sale and therefore not subject to sales, use or retailers occupational tax?

Please send your response to:

NAME/ADDRESS

Thank you for your time and assistance in this matter. If you have any questions or need additional information, please contact me.

## **DEPARTMENT'S RESPONSE**

Please refer back to our previous letter (ST 06-0201-GIL) in which we explained the difference between a true lease and a conditional sale.

In reviewing the information provided this time, it appears that the transaction that is taking place is neither a conditional sale nor a lease. It appears to be a loan guaranteed by a lien on the buses. If this is the case, and "Company A" retains title to the buses, there appears to be no sales tax liability due in regards to the loan transaction. However, we are unable to make a binding determination without reviewing all documents in the context of a Private Letter Ruling.

If you require additional information, please visit our website at [www.ILTAX.com](http://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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