

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.2013 Persons in the Business of Both Renting and Selling Tangible Personal Property—Tax Liabilities, Credit
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TITLE 86: REVENUE

**PART 130
RETAILERS' OCCUPATION TAX**

Section 130.2013 Persons in the Business of Both Renting and Selling Tangible Personal Property—Tax Liabilities, Credit

a) Purchases of Tangible Personal Property for Rental

Use Tax is due whenever tangible personal property is purchased for use. For Illinois sales tax purposes, lessors of tangible personal property under true leases are deemed to be the users of that property. Consequently, lessors incur a Use Tax liability (and applicable local occupation tax reimbursement obligations) based on their cost price of the items they purchase for rental purposes. (See Section 130.2010 of this Part.) The only exception is the rentor of an automobile under a lease term of one year or less. (See 86 Ill. Adm. Code 180.101.) (Further references in this Section to “Use Tax” due on a purchase includes the Use Tax and all applicable local occupation tax reimbursement obligations due on that purchase.)

Persons who sell tangible personal property to lessors who will rent or lease that property incur Illinois and local Retailers' Occupation Tax liabilities on their gross receipts from such sales. Consequently, when a lessor purchases tangible personal property for rental purposes, he should pay his Use Tax liability to his supplier. If the lessor does not pay the Use Tax to his supplier, he must self-assess and pay it directly to the Department. Persons who are lessors and whose only selling activity consists of selling items that come off lease and are no longer needed for rental purposes cannot purchase for resale.

If an item is placed in a rental inventory, it has been purchased for rental purposes and Use Tax is due. “Rental inventory” means that the owner, in order to state his intended use of the property as rental property, has recorded the property in his books and records as rental property in accordance with generally accepted accounting principles. Depreciation of property used for rental purposes demonstrates an intent to include that property in rental inventory.

b) Purchases of Tangible Personal Property for Resale

If a retailer purchases tangible personal property for resale, no tax is due on that transaction so long as all of the requirements of Section 130.1405 of this Part are satisfied. If an item is purchased for resale and placed in a sales inventory immediately after it is purchased, the Department will determine that it has been purchased for resale for so long as it remains in the sales inventory. “Sales inventory” means that the

owner, in order to demonstrate his intention to resell the property, has recorded the property in his books and records as being for sale in accordance with generally accepted accounting principles.

c) Purchases of Tangible Personal Property by Persons Who Both Rent It and Sell It to Others but Who Do Not Maintain Separate Rental and Sales Inventories

Some persons function as combination lessors/retailers and do not maintain separate rental and sales inventories. These persons purchase tangible personal property to rent to others and also purchase tangible personal property to sell to others without making such property available for rental. The question of whether the combination lessor/retailer, who does not maintain separate sales and rental inventories, incurs a Use Tax liability when purchasing items for his combined inventory depends on whether he is primarily engaged in the business of renting or is primarily engaged in the business of selling. In order to make that determination, the Department will look to this lessor/retailer's gross receipts.

- 1) If the gross receipts from Illinois locations are primarily from rentals, the combination lessor/retailer who does not maintain separate rental and sales inventories is primarily a lessor who incurs a Use Tax liability on items purchased for rental purposes and a Retailers' Occupation Tax liability on all items sold at retail. This combination lessor/retailer can give suppliers certificates of resale, but only for items that will be resold without being rented. If the lessor/retailer knows, at the time of purchase, that a percentage of the items being purchased will be resold without being rented, he may give his supplier a certificate of resale specifying the percentage of items that will be resold without being rented and pay tax only on those items that will be rented before they are sold. The combination lessor/retailer who does not maintain separate rental and sales inventories and who is primarily a lessor incurs a Use Tax liability on all items that are rented before they are sold.
- 2) If the gross receipts from Illinois locations are primarily from sales, including sales of items coming off lease and sales of items encumbered by leases, the combination lessor/retailer who does not maintain separate inventories is primarily a retailer. This combination lessor/retailer can purchase his entire inventory tax-free by providing certificates of resale to his suppliers. He may use items for rental purposes without incurring a Use Tax liability if the items are used in demonstrations to potential buyers or are put to some other interim use. (See 86 Ill. Adm. Code 150.306.)

d) Persons Who Have Not Paid Tax on Tangible Personal Property that They Have Purchased for Rental Purposes--Paying Taxes Owed

Persons who have not paid Use Tax on items of tangible personal property that they have used for rental purposes must check their records to find out when they made the purchases on which they still owe Use Tax. If, for example, items that were purchased tax-free under the percentage certificate of resale described in subsection (c)(1) were rented before they were resold, tax is due on those items. A return for each liability period for which taxes are owed must be completed and filed with the Department. If a return was filed for a period for which additional tax is due, then an amended return for

that period must be completed and filed with the Department. Returns must include taxable amounts that were not reported for the periods in question and must include applicable penalty and interest.

e) Sales of Items Coming Off Lease That Are No Longer Needed in a Rental Inventory

The question of whether a lessor's sale of tangible personal property coming off lease that is no longer needed for the lessor's rental inventory is subject to Retailers' Occupation Tax liability depends on whether the seller is strictly a lessor, or whether the seller is otherwise engaged in the business of selling like-kind property.

- 1) A person who is strictly a lessor and whose only sales are of items no longer needed for his rental inventory does not incur Retailers' Occupation Tax liability on those sales.

For example, a lessor of computer equipment who does not maintain a sales inventory of computer equipment and who does not otherwise hold himself out as being in the business of selling like-kind property, incurs no Retailers' Occupation Tax liability on sales of computer equipment that he no longer wants in his rental inventory. This would be true even though the lessor advertised such sales and was required to make a considerable number of such sales over time. As long as all of the sales are of equipment no longer needed for the lessor's rental inventory, they constitute non-taxable isolated or occasional sales. (See Section 130.110 of this Part.)

- 2) However, the rule is different if the lessor is otherwise engaged in the business of selling like-kind property at retail. A lessor of tangible personal property who sells like-kind property apart from his sale of items no longer needed for his rental inventory incurs Retailers' Occupation Tax liability on all retail sales of that property including sales of items no longer needed for his rental inventory. This is true because a person who is engaged in the business of selling tangible personal property cannot make an isolated or occasional sale of like-kind tangible personal property.

- A) For example, a lessor of computer equipment who also maintains a sales inventory of computer equipment incurs Retailers' Occupation Tax liability whenever he makes retail sales of computer equipment, including sales of computer equipment no longer needed in his rental inventory. The result would be the same even if the lessor/seller did not maintain a separate sales inventory, as such, but offered computer equipment for sale apart from items coming off lease that are no longer needed for his rental inventory. This would be the case where the lessor advertised or otherwise held himself out as a supplier of computer equipment apart from the items coming off lease and no longer needed for his rental inventory. In this situation, the lessor/seller would incur a Retailers' Occupation Tax liability on all his sales of computer equipment for use or consumption and must collect the complementary Use Tax from his customers.

- 3) The rule is also different with respect to the sale of used motor vehicles by leasing and rental companies. A person who is engaged in the business of leasing or renting motor vehicles to others and who sells a motor vehicle that is no longer needed in his rental inventory to a user or consumer incurs a Retailers' Occupation Tax liability on that sale. See Section 130.111 of this Part. In this context, a "motor vehicle" means a passenger car defined in Section 1-157 of the Illinois Vehicle Code as *a motor vehicle of the First Division including a multipurpose passenger vehicle that is designed for carrying not more than 10 persons.* [625 ILCS 5/1-157] Vehicles not considered "passenger vehicles" as defined in Section 1-157 of the Illinois Vehicle Code (for example, trucks) are subject to the provisions of subsections (e)(1)-(2) of this Section.
- f) Transfers of Tangible Personal Property from a Sales Inventory to a Rental Inventory and Vice Versa by Persons Who Both Rent and Sell that Tangible Personal Property to Others
 - 1) If an item is moved from a sales inventory to a rental inventory, Use Tax is due based on the cost price of that item. In this situation, the Use Tax must be self-assessed and paid on a return filed for the month in which the item was moved to the rental inventory.
 - 2) If an item is moved from a rental inventory to a sales inventory, Retailers' Occupation Tax is due on the gross receipts from sale when the item is sold to a user or consumer. In this situation, the lessor/seller would collect the complementary Use Tax from the purchaser. However, a credit, as provided in subsection (h), may be available for Use Tax and local Retailers' Occupation Tax reimbursements paid to an Illinois supplier when the item was purchased for the rental inventory.
- g) Receipts from the Rental of Tangible Personal Property

Receipts from the rental of tangible personal property under a true lease are not subject to Retailers' Occupation Tax liability. (See Section 130.2010.) However, receipts from the rental of automobiles under lease terms of one year or less are subject to automobile renting occupation tax liability. (See 86 Ill. Adm. Code 180.)
- h) Persons Who Sell Tangible Personal Property After Using It for Rental Purposes
 - 1) As is set out above in subsection (e)(1):
 - A) A lessor whose only sales are sales of items coming off lease that are no longer needed for his rental inventory incurs no Retailers' Occupation Tax liability on those sales.
 - B) Lessors who are otherwise engaged in the business of selling like-kind property incur Retailers' Occupation Tax liability on all their sales, including sales of items coming off lease that are no longer needed for their rental inventories.

- C) Lessors and renters of automobiles incur Retailers' Occupation Tax liability when they make retail sales of passenger cars coming off lease that are no longer needed for their rental inventories.
- 2) A lessor who incurs a Retailers' Occupation Tax liability on the sale of an item can take a credit against that liability for any Use Tax and any local Retailers' Occupation Tax reimbursements that he paid to a supplier registered to collect Illinois tax when he purchased that particular item. However, this credit cannot exceed the amount of Retailers' Occupation Tax incurred by the lessor/retailer when he sells the item.
 - 3) If a lessor filed a return and paid the tax directly to the Department, the lessor must file a claim to recover it. (See Subpart O.) However, this claim cannot exceed the amount of Retailers' Occupation Tax incurred by the lessor/retailer when he sells the item.
 - 4) The credit is available to all lessors who are required to pay Retailers' Occupation Tax when selling an item after having used that item for rental purposes, including lessors of motor vehicles. The credit is available to all lessors (and renters) of motor vehicles who incur Retailers' Occupation Tax liability on sales so long as Use Tax was paid to an Illinois retailer when the lessor (or renter) purchased the particular motor vehicle being sold. If the lessor (or renter) did not pay Use Tax to an Illinois dealer when he purchased the motor vehicle being sold but, instead, filed a return and paid the tax directly to the Department, the credit is not available and it must not be taken. (If the lessor filed a return and paid the tax directly to the Department, the lessor must file a claim to recover it. See Subpart O.)
 - 5) There is no credit available for taxes paid by a rentor under the Automobile Renting Occupation and Use Tax Act [35 ILCS 155].
- i) Documentation to Support the Credit

When the credit described at subsection (h) is claimed, the lessor/seller must retain documentation demonstrating that Use Tax was paid to a supplier registered to collect Illinois tax when he purchased the item being sold and in what amount. A paid receipt from the supplier for the item on which the credit is being claimed showing the amount of Use Tax paid as a separate item is sufficient to document the credit for all items other than motor vehicles.

For motor vehicles, the credit is to be documented by a copy of the transaction reporting return filed by the Illinois dealer from whom the lessor purchased the motor vehicle. That transaction reporting return will show the amount of Use Tax that the lessor paid to the Illinois dealer. If the lessor paid Use Tax to the Department by filing a Use Tax Transaction Return when the vehicle was purchased, the credit is not available and must not be taken. (In this situation, the lessor would have to file a Claim for Credit to recover the Use Tax. See Subpart O of this Part.)

AGENCY NOTE: Nothing in this Section may be construed to abrogate or modify any requirements otherwise imposed upon sellers of motor vehicles by Illinois law. For example,

motor vehicle leasing and rental companies that sell motor vehicles must comply with all applicable requirements of the Illinois Vehicle Code [625 ILCS 5], including the dealer licensing provisions set forth in Chapter 5 of that Act. Motor vehicle leasing and rental companies must comply with Section 4(f) of the Illinois Vehicle Franchise Act [815 ILCS 710/4(f)]. Also, motor vehicle leasing and rental companies must abide by the advertising requirements of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505], as well as the Illinois Motor Vehicle Advertising rules (14 Ill. Adm. Code 475).

(Source: Added at 25 Ill. Reg. 1303, effective January 17, 2002)