Leasing Taxes in Illinois and Chicago

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Illinois Tax Structure

- No personal property tax;
- No tax on rental receipts, except for auto rentals.
- Retailers Occupation Tax (ranging from 6.25% to 9.25%) Dependent on location of seller for in state purchases
- Use Tax 6.25% on purchases outside of Illinois
- Local and Home rule use taxes

The rate on titled equipment is determined by the jurisdiction of the equipment location

Leased vehicles titled at an address outside of Chicago but garaged in Chicago, will be subject to the 1% Titled Tax
Leasing Property in Illinois

Property Leased in Illinois
- Very different than most other states!
- Tax is due up front on the purchase price of the equipment paid by the lessor
- The lessor is deemed to be the end user
- 86 Ill. Adm. Code 130.2010

Conditional Sale is treated as an installment sale rather than a lease for tax purposes.
Characterized by a nominal or one-dollar purchase option at the close of the lease term
Leasing Property in Illinois (continued)

• A true lease generally has no buy out provision at the close of the lease.

• Lessors may not “pass through” their tax obligation to the lessees as taxes.

• Economic burden of the tax may be passed on to the lessee by contract.
Illinois Tax Exemptions
Yes, There Still are Some

• Automobiles leased for terms of one year or less, are subject to the Automobile Renting Tax, (35 ILCS 155/1 et seq.) No upfront Use Tax is required
• Sales of tangible personal property to lessors who lease that property to governmental bodies under a lease of one year or longer. (86 Ill. Adm. Code 130.2012)
• Sales to lessors who lease computers, communications equipment and equipment used in the diagnosis, analysis, or treatment of hospital patients under leases of one year or longer with hospitals to whom the Department has issued a tax exemption identification number. (86 Ill. Adm. Code 130.2011)
Illinois Tax Exemptions (continued)

• Sales to lessors of equipment leased to Manufactures claiming the Manufacturing Machinery and Equipment Exemption (86 Ill. Adm. Code 130.330)

• Sales to lessors of equipment leased to Farmers claiming the Farm Machinery and Equipment Exemption (86 Ill. Adm. Code 130…)

• Sales of Rolling Stock to lessors leasing equipment to interstate common carriers for hire. (86 Ill. Adm. Code 130..)
Illinois Tax Exemptions (continued)

• There is no exemption for sale of property that is leased to exempt organizations. No pass through of a lessee’s exemption (exclusively religious, charitable or educational organizations or units of government)

• The Use Tax liability remains on the lessor notwithstanding the status of the lessee. (See Continental Illinois Leasing Corp. v. Department of Revenue, 108 Ill. App. 3d 583 (1st Dist., 1982))
Credits Available

Multistate Use of Leased Equipment

• Leased equipment initially placed in service in other states that is brought into Illinois is subject to the Illinois and Chicago Home Rule Use Taxes, even if the equipment is only in Illinois on a temporary basis (See Philco Corporation et al. v. Department of Revenue, 239 N.E. 2d 805, 40 Ill. 2d 312 (June 21, 1968))

• Depreciation for Prior Out of State Use
  – A credit is available for depreciation, on a straight line basis for the period of prior out of state use.
Credits

• A credit is available of any taxes properly paid to another state either up front taxes or taxes on the lease stream.

• If a combination lessor/retailer pays tax on leased inventory up front and then sells that property at the end of the lease term, in a taxable sale, a credit is available up to the amount of the tax initially paid. Reg. 130.2013
Interim Use

• A retailer may use property purchased for resale without paying tax. This includes demonstration use and even leasing if the property is always for sale and is not depreciated. Reg. 150.306
Sales of Leased Inventory

• If a lessor is also a retailer of the type of equipment that it leases then its sales of used equipment coming off lease is subject to sales tax in Illinois.

• If the lessor only sells equipment coming off lease and has no other sales inventory its sales of used equipment may qualify as isolated and occasional sales.
Chicago Personal Property Transaction Tax
Leased tangible personal property located in Chicago, is subject to the 6% Transaction Tax (applied to the monthly rental/lease charge). The rate does not apply to any separately stated charges such as maintenance (See Chicago Municipal Code section 3-32-030 (A)).
Equipment located outside the City of Chicago

- Leased property purchased within the City of Chicago and leased at a location outside of Chicago is not subject to Transaction Tax.
- If leased property is relocated to the City of Chicago it will be subject to Transaction Tax unless the use in the City is less than 50% of the lease (See Personal Property Lease Transaction Tax Ruling #1 Consummation of Transaction Effective date: June 1, 2004).
Exempt Leases

- Unlike the State, the City does have exemptions for charitable, educational or religious and governmental organizations.
- A University, located in Chicago, leases personal computers for:
  - Student use
  - University purposes
- The University also subleases the use of the personal computer time to a separate entity, such as a bureau.
  - The lease is not taxable in the first situation.
  - The lease is taxable under the sublease, as the computer time is not being used for exempt purposes.
Personal Property not Tangible Personal Property

• The transaction Tax also applies to intangible property
• Nonpossessory Computer Leases
  A consumer accesses an out of state computer database from a terminal in Chicago. The City asserts that the Transaction Tax applies to charges for such services.
Current Events in Sales Taxes Policy

ELA’s Tax Executive Roundtable
June 12, 2006

Kevin Thompson
COST
Overview

- State Fiscal/Political Climate
- Sales Tax Trends
- Things to Come
State Legislative (Tax) Climate

• Pro
  – Robust revenue growth
  – Election year

• Con
  – Structural mismatch
  – Medicaid, education funding litigation, pensions
  – Vox populi: tax initiatives & referendums
State Fiscal/Political Climate (cont’d)

• Little Appetite for “Tax Increases”
• Strong Spending Pressure
• Perception that (Big) Business/Wealthy Don’t Pay Taxes
State/Local Bus. Taxes, FY03

- Sales Taxes on Business Inputs: 25%
  - $100
- Excise Taxes: 11%
  - $44
- Corporate Income: 8%
  - $35
- Payroll Taxes: 8%
  - $30
- License, Other: 9%
  - $38
- Property Taxes: 39%
  - $156

Note: Sales tax on business inputs is 3 times the corporate income tax.
## Business Share of Sales Taxes

<table>
<thead>
<tr>
<th>Top 5</th>
<th>Bottom 5</th>
<th>Other States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Louisiana</td>
<td>67.6%</td>
<td>Utah 33.7%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>55.6%</td>
<td>S. Carolina 33.0%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>53.5%</td>
<td>Arkansas 32.6%</td>
</tr>
<tr>
<td>New York</td>
<td>53.4%</td>
<td>Hawaii 32.6%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>53.0%</td>
<td>Michigan 32.3%</td>
</tr>
</tbody>
</table>

### U.S. Average: 43%
Business Share of Sales Taxes

Lowest

Highest

Council On State Taxation
What Type of Tax Do You Want?

• Current Law: $233 Billion
• Tax ALL transactions (Gross Receipts Tax): $989 Billion
• Tax ALL household consumption: $371 Billion
  – Business purchases exempt
  – Ideal retail sales tax
# Business Share of Services

<table>
<thead>
<tr>
<th>Service Category</th>
<th>Business Share</th>
<th>Total Expenditure ($b)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principally Business</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advertising</td>
<td>98%</td>
<td>$175.3</td>
</tr>
<tr>
<td>Architecture &amp; Engineering Services</td>
<td>96%</td>
<td>$125.2</td>
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<tr>
<td>Employment Services</td>
<td>94%</td>
<td>$88.6</td>
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<tr>
<td>Management &amp; Technical Services</td>
<td>88%</td>
<td>$89.8</td>
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<tr>
<td>Data Processing Services</td>
<td>84%</td>
<td>$38.4</td>
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<tr>
<td>Accounting &amp; Legal Services</td>
<td>71%</td>
<td>$196.1</td>
</tr>
<tr>
<td><strong>Principally Household</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Automotive Repairs</td>
<td>26%</td>
<td>$145.6</td>
</tr>
<tr>
<td>Personal Services</td>
<td>11%</td>
<td>$96.5</td>
</tr>
<tr>
<td>Education Services</td>
<td>7%</td>
<td>$131.4</td>
</tr>
<tr>
<td>Amusement &amp; Recreation</td>
<td>5%</td>
<td>$81.0</td>
</tr>
<tr>
<td>Medical Services</td>
<td>1%</td>
<td>$889.5</td>
</tr>
</tbody>
</table>
Sales Tax Trends – Base Expansion

- Taxation of services
- Exemption elimination
  - “Loopholes”
  - Reviews (e.g., Florida “FAIR” Tax)
- California AB 1983
Sales Tax Trends – Collection Issues

- SSTP / Congress
- Affiliate nexus
- Registration requirement for state contracts
Legislation of Interest

• California MIC (AB 2218)
• New Jersey Sales Tax Expansion
• Puerto Rico Sales Tax
• Pennsylvania *Graham Packing* “fix”
• Oregon Ballot Initiative: Taxpayer Disclosure
Longer-term Issues

• Impact of “Tax Reform”
  – New Alternative Corp. Income Taxes (i.e., gross receipt taxes)
  – Property taxes
  – Ohio CAT
  – Texas “margins tax”

• SSTP and sourcing

• Administration
Questions?

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