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LEGAL UPDATES

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# Illinois DOR Clarifies Application of New Tax on Pre-2025 Operating Leases

## Services

Retail Real Estate

State & Local Taxation (SaLT)

Tax

## Industry

Real Estate, Development, & Construction

## Professionals


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Effective January 1, 2025, Illinois' Public Act 103-592 changed how the state taxes operating leases. Prior to this change, Illinois did not tax receipts from the lease of tangible personal property. Instead, lessors were considered the end users and incurred tax liability when they purchased the property they subsequently leased.

The Illinois Department of Revenue recently issued ST 25-0051-GIL clarifying the department's interpretation as to how to properly apply the law to an operating lease contract that commenced before 2025. Acknowledging that the lessor, under prior law, would have already paid tax on the property when it was acquired, the department explains that gross receipts from retail leases received after January 1, 2025, are nevertheless subject to retailers' occupation tax (ROT).

The Illinois statutes apply the tax to "lease receipts on or after January 1, 2025, for leases in effect, entered into, or renewed on or after that date." Having previously paid tax under the Use Tax Act on its purchase of the property, does not exempt or exclude the lessor from ROT on lease receipts received on or after January 1, 2025.

The department's guidance references the *New Heights Recovery & Power, LLC v. Bower*, 347 Ill. App. 3d 89 (2004) Appellate Court decision, noting that there "is no vested right in the mere continuation of a law and the legislature has an ongoing right to amend a statute."

Note that the ROT is not imposed on leases of motor vehicles, watercraft, aircraft, or semitrailers.

### What This Means to You

Lessors and lessees in Illinois should review their agreements to confirm they are properly charging and paying Illinois tax on their operating leases.

## Contact us

If you have questions about how this decision impacts your business, contact Bob Romashko, Bill Schenkelberg, or a member of Husch Blackwell's State and Local Tax team.