

The Service Occupation Tax is a tax imposed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

July 5, 2007

Dear Xxxxx:

This letter is in response to your letter dated December 19, 2006, in which you request information. We apologize for the delay in responding to your inquiry. 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:

My client is a retailer of internet based corporate educational and learning services that primarily works with corporate training and human resources departments nationwide. My client has developed a service and/or product to monitor industry best-practices, new technologies, and industry events related to corporate learning. My client provides four basic services and/or products to customers in your state. 1. Research memberships 2. Workshops 3. Benchmarking 4. Advisory Consulting. A separate charge is made for each service or product sold to a customer.

**Research Memberships:**

These are annual memberships which give corporations access to online research through my client's STATE website as well as access to advisory services. It is a license to access online content, similar to a subscription to a magazine. Specifically, members:

- Have access to a special website filled with case studies, industry studies, selection guides, presentations and bulletins to help members design world-class learning and talent management programs. All research is searchable by keyword, industry, vendor, program type, analyst, and topic. A member can find specific benchmarks, case-studies, industry reports, and presentations easily.

- Receive regular email updates with links to Research Bulletins, webcasts and news about the industry. A member may receive more than 50 bulletins per year, covering important vendor announcements, new offerings, breakthrough new research findings, and best-practices.
- Have unlimited access to a special online Q&A system that lets members ask questions about vendors, approaches, best-practices, etc. All questions and responses are held in a database for future reference and searching.
- Have direct access to analysts for telephone advisory consulting and help with your particular needs. Research members can schedule calls with my client to ask about market trends, vendors, best practices, and implementation strategies.
- Regional workshop event [sic] are held throughout the country. These half-day programs, led by my client's analysts, give a member [sic] chance to meet directly with an [sic] analysts and other research members to share ideas, learn, and compare your experiences. These events are member-only meetings designed to meet the needs of the members.

### **Workshops:**

In a classroom setting, my client will host on-site workshops. Through a combination of presentations, detailed case studies and directed work sessions analysts guide the participants through the development of customized actionable plans.

### **Benchmarking:**

The benchmarking program is designed [sic] provide specific information to improve a company's learning operation. My client has a complete database of industry research (statistics, costs, best practices, implementation approaches) of corporate training. This benchmarking solution will identify and create a customized benchmarking program to help their customers understand industry trends and compare themselves against similarly sized organizations in their Industry.

### **Advisory Consulting:**

Sales of consulting services are primarily a detailed assessments [sic] designed to benchmark their customers organization [sic] against their industry's best practices. For an additional fee, my client will perform a comprehensive analysis of a customer's current practices and provide their customers with a written report of the results and any recommendation found in the study. This written report is then sent to their customers on tangible media. The written report will be specifically addressed to the customer and will contain original information that is unique to that customer and the specific research project.

However, once the original report is issued to the customer, my client is allowed to sanitize the write-up and resale [sic] the results of the study to unrelated third-parties.

### **Taxability of the services and/or products described above:**

Given that my client has nexus with your state and that my client's customers are utilizing and receiving these services described above in your state. [sic] Are the sales

of the four separately charged services described above subject to sales or use tax in your state?

## **DEPARTMENT'S RESPONSE:**

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The serviceman's liability may be calculated in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

Some of the services described in your letter appear to involve the transfer of tangible personal property (written reports or other tangible media for example) incident to a sale of service and would be subject to liability under one of the four methods described above. Please note that information or data that is electronically transferred or downloaded is not considered the transfer of tangible personal property in this State. See 86 Ill. Adm. Code 130.2105(a)(3). However, canned computer software is considered tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. See 86 Ill. Adm. Code 130.1935.

I hope this information is helpful. 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,

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