

This letter describes the tax liabilities involved in the sale of data analysis services. See 86 Ill. Adm. Code 140.101. (This is a PLR).

February 20, 2008

Dear Xxxxx:

This letter is in response to your letter dated April 10, 2007 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.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of our client, Company, we respectfully request the Illinois Department of Revenue to issue a Private Letter Ruling pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

General Information

1. Enclosed please find an original Form IL-2848, Power of Attorney, authorizing FIRM to represent COMPANY before the Illinois Department of Revenue (the 'Department').
2. This Private Letter Ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. This PLR is requested to determine the Retailers' Occupation Tax ('ROT'), Retailers Use Tax ('RUT'), Service Occupation Tax ('SOT') and Service Use Tax ('SUT') consequences of the actual business practices of Company.

3. Company is not currently engaged in litigation with the Department in regard to this or any other tax matter.
4. Company is not currently under audit by the Department in regard to this or any other tax matter.
5. To the best knowledge of Company's personnel, the Department has not previously ruled regarding this matter for Company. In addition, Company has not submitted the same or similar issue to the Department.
6. Company requests that certain information be deleted from the PLR prior to dissemination to others. Company requests that its name and address be deleted.
7. Company knows of no authority contrary to the authorities referred to and cite below.

Statement of Material Fact

Company provides data aggregation and business content services. Company maintains an extensive data warehouse containing information about a number of domestic and foreign companies (the 'Data Warehouse'). Company's customers (the 'Customers') utilize Company's services to ensure the accuracy of existing data (the 'Data') and to provide additional content for purposes of market and business intelligence. Company also provides credit and risk identification and analysis data in accordance with the Customer's specifications.

The Customer typically requests a combination of the services below to customize its business content. Company uses millions of industry, product, corporate, geographic, demographic, and/or risk records contained in its proprietary Data Warehouse to perform its services.

The services performed by Company (the 'Services') are as follows:

1. Data Validation: Company validates the Data for accuracy (i.e. street address, zip code) by comparing it against the data in its Data Warehouse. Company provides an output file containing up-to-date, accurate data based on the Customer's data field specifications which can be used by the Customer to overwrite its existing data.
2. Data Enrichment: Company provides an output file with additional Customer specified industry, product, corporate, geographic, and/or demographic content. Additional data is intended to create a more robust, cross functional and valuable data set (the 'Enhanced Data') for the Customer which can be used by the Customer to append its existing Data.
3. Data Rationalizing: Certain data characteristics (i.e. women-owned business) and certain associations between records (i.e. corporate parent-child relationships among vendors in separate records) are specified by the Customer. Data with common data attributes and associations are identified and data is organized in an output file. The Customer uses the data in the output file to identify and leverage certain vendor/customer relationships, target optimum purchasing/sales opportunities, and business and market intelligence. Data rationalizing is generally done in conjunction with Data Validation and/or Data Enrichment services.

4. Risk Analysis: Company gathers and consolidates risk and credit-worthiness data for certain Customer specified records within the Data. (i.e. credit scores for certain vendors identified as high risk). Risk and credit-worthiness data is provided to and continuously updated by Company with data from third party data providers and credit bureaus. Company consolidates the credit and risk data based on the Customer's specifications and provides customized reporting and updates (i.e. if vendor falls below a certain credit rating, Company provides an update file to the Customer).

Company does not act upon or change the Data provided by the Customer. Company provides an output file containing the Enhanced Data, subsequent updates to the Enhanced Data or credit and risk analysis data suitable for the Customer to act upon. Customer specifies the data attributes and data associations it wants to enhance in its Data and engages Company to use its proprietary software and Data Warehouse to meet the request. Company may briefly possess the Customer Data but does not retain nor act upon the Data other than [sic] to extract key fields to be used as record identifiers. These record identifiers are used in the many queries performed by Company to perform Services. The Enhanced Data does not become executable software nor is any additional software required for the Customer to use the Enhanced Data.

Company receives the Data and returns the enhanced data via FTP, e-mail, or other Internet-based means. On occasion, Company may return the enhanced data in a CD or tape media format. However, all services are provided via electronic means unless otherwise specifically requested. The Customer typically transmits the Data to Company servers located outside Illinois where the Services are performed.

Payment for Services are made either on a one time fee basis, a subscription basis or a usage-based fee.

Company provides no training, training manuals, software, hardware, or installation services for its customers. The Services do not include any separate line transmission charges; each customer is required to arrange telecommunications access to the Website independently. All Services are performed outside of the state of Illinois.

Request for Ruling

Based on the material facts, we respectfully request a response to the following questions:

1. Are the Services sold by Company separately or in aggregate subject to the ROT or RUT[sic] when no Tangible Personal Property ('TPP') is sold incident to the provision of the Service?
2. Are the Services sold by Company separately or in aggregate subject to the ROT when delivered via tangible media if the cost of TPP is inconsequential when compared to the cost of Services?
3. Are the Services sold by Company separately or in aggregate subject to the SOT or SUT when no TPP is sold incident to the provision of the Service?

4. Are the Services sold by Company separately or in aggregate subject to the SOT when delivered via tangible media if the cost of TPP is inconsequential when compared to the cost of Services?

5. If said Services are deemed subject to the SOT and the cost of the TPP is inconsequential when compared to the cost of Services, does Company qualify for the de minimis exception?

Relevant Authorities and Discussion

Illinois imposes the Retailers' Occupation Tax and Use Tax on the sale or use of tangible personal property. 35 Ill. Comp. Stat. §§ 120/2; 105/3. Illinois defines a sale at retail, for the purposes of the Retailers Occupation Tax, as 'any transfer of the ownership or title to tangible personal property to a purchaser.' 35 Ill. Comp. Stat. § 120/1. Illinois defines the taxable use, for the purposes of the Illinois Use Tax, as 'the privilege of using in [Illinois] tangible personal property. 35 Ill. Comp. Stat. § 105/3. The Retailers' Occupation Tax does not apply to the sale of personal services. 86 Ill. Adm. Code § 130.120(d). Illinois imposes the Service Occupation Tax and Service Use Tax on both the sale and use of tangible personal property incidental to the provision of a service. 35 Ill. Comp. Stat. §§ 115/3; 110/3. Persons that provide services in Illinois are deemed 'servicemen.' 35 Ill. Comp. Stat. §§ 115/3; 110/3. The Service Occupation Tax does not apply to the sale of personal services. 86 Ill. Adm. Code § 140.125(c).

Company provides data aggregation and business information content services. The value of the products sold by Company relates to the business information content in the Data Warehouse, the customized data aggregation and the customized data organization. As a rule, the Services are delivered via electronic media. On the few occasions where the Services are delivered via TPP, the value of the TPP is inconsequential when compared to the cost of the Services. The true object of the Services remains the business information content and the custom aggregation and organization of the business information content by Company. As a result, we believe that the Services provided by Company should not be subject to the Retailers Occupation Tax, the Use Tax, or the Service Occupation Tax.

If the Services separately or in aggregate are deemed subject to the Service Occupation Tax, we feel that Company should qualify for the de minimis exception. Illinois deems servicemen that transfer tangible personal property that is less than 35% of the value of services to be de minimis servicemen. 86 Ill. Admin. Code § 140.108 (a). De minimis servicemen are not subject to the Service Occupation Sales Tax but must instead properly remit use tax to Illinois on all tangible personal property delivered with the provision of a service. 86 Ill. Admin. Code § 140.108(a). The use of property 'that is acquired outside of [Illinois] and caused to be brought into [Illinois] by a person who has already paid a tax in another state in respect to the sales, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state' is exempt from tax. 35 Ill. Admin. Code [sic] §§ 110/3-45(c); 105/3-55(d).

35 Ill. Admin. Code §§ 105/3 provides that 'tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer.' Company performs all services in STATE and all purchases of tangible personal property that are transferred to the Customer are purchased in STATE. As a result, the purchase or first taxable use of the property occurs in STATE and Company remits STATE sales or use tax accordingly. To the extent of the tax properly paid to another state, Illinois exempts

from both the Service Use Tax and the Use Tax tangible personal property that was properly taxed in another state. 35 Ill. Admin. Code [sic] §§ 110/3-45(c); 105/3-55(d). Because Company properly remits sales and use tax to the state of STATE for all tangible personal property transferred with the provision of Company's services, Company should be allowed a credit for use tax properly paid to STATE in relation to the tangible personal property transferred incident to its services.

Conclusion

We believe that the Services sold by Company are not subject to the Illinois ROT, RUT [sic] or SOT. The true object of the Services is the customized business information content which is personal in nature and delivered electronically.

Should Illinois deem the Services subject to the SUT, we believe Company qualifies as a de minimis serviceman. In support of this belief, the cost of the TPP (typically a compact disc or a tape), when used in the delivery of the Service, is well under the 35% threshold established by Illinois to qualify as a de minimis serviceman.

Additionally, we believe that Company, once deemed a de minimis serviceman, is exempt from SUT, on TPP used in the performance of the Services, to the extent that tax has been appropriately remitted to the jurisdiction of first use located outside the state of Illinois.

We respectfully request that the Department issue a ruling on the aforementioned questions. If the Department cannot conclude that these services should not be subject to tax, I request that the Department contact me to determine what additional information is required or allow the taxpayer to rescind this ruling request.

DEPARTMENT'S RESPONSE:

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 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. 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) Service Occupation Tax on the separately stated selling price of tangible personal property transferred incident to service;
- (2) Service Occupation Tax on 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 (the second method described above). 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.

The transactions described in your letter entered into by COMPANY are considered service transactions and are not sales of tangible personal property. These transactions are not subject to Retailers' Occupation Tax liability.

The Department does not consider data transferred electronically to be a transfer of tangible personal property. See subsection (a)(3) of 86 Ill. Adm. Code 130. 2105. Therefore, service transactions that only involve the electronic transfer of data or information to service customers would not be subject to Retailers' Occupation Tax, Service Occupation Tax, Use Tax, or Service Use Tax liability.

However, service transactions where the data or information is transferred to customers through the use of tangible media, such as a disk or tape, would be considered the transfer of tangible personal property and would be subject to Service Occupation Tax or Use Tax liability as described under the four tax bases described previously. Please note that transfers of "canned" computer software are considered transfers of tangible personal property in Illinois. Transfers of canned software are considered transfers of tangible personal property regardless of the means of delivery. Service transactions where canned computer software is transferred to customers, even through electronic means, would be considered the transfer of tangible personal property and would

be subject to Service Occupation Tax or Use Tax liability as described under the four tax bases described previously. Based upon the information provided in your letter, we are answering your inquiry with the understanding that COMPANY is not transferring any canned (prewritten) computer software to its customers in any form, including electronically.

The Department's records reflect that COMPANY is not registered in this State for reporting either Retailers' Occupation Tax or Service Occupation Tax. Based upon all of the information contained in your letter and your assertion that the annual aggregate cost of the tangible personal property transferred by COMPANY is less than 35% of its total annual gross receipts from service transactions, COMPANY may handle its Illinois sales tax liability as an unregistered de minimis serviceman under the fourth method described earlier in this letter. COMPANY would receive a credit against any Use Tax that may be due in this State on the transfer of any tangible personal property to its service customers if it paid tax that was properly due in another state in respect to the sale, purchase or use of that property. See subsection (a)(3) of 86 Ill. Adm. Code 150.310. If the amount of such tax for which a credit is given is less than the amount of tax that would be incurred in this State, it may register with the Illinois Department of Revenue for the limited purpose of self assessing Use Tax and paying the difference directly to the Department.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

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