

The Department does not consider the viewing and downloading of video, text and similar data over the Internet to be the transfer of tangible personal property. See 86 Ill. Adm. Code 130.101. (This is a GIL.)

January 5, 2009

Dear Xxxxx:

This letter is in response to your letter dated August 29, 2008, 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.

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:

Our client is the provider of a data farm that stores recorded information for customers nationwide. CLIENT is a Delaware corporation with an administrative office in Illinois. CLIENT provides the internet recording of the surveillance housed at said data farm.

Taxability of Specific Transactions

Question 1

The servers that record the cameras will be in Illinois. The service will be provided through a monthly subscription fee charged to the owner of the camera. The service will be marketed and sold by CLIENT. The subscription is for the 24/7 recordings of the camera and storage of the information. The information is available to the customer, for viewing through the internet, for up to a 30 day period.

Is the subscription service taxable?

If you have any questions, please do not hesitate to contact us. We appreciate you [sic] assistance in clarifying the sales tax liability in question for our client.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser for valuable consideration for use or consumption and not for resale. See 86 Ill. Adm. Code 130.101 and 130.201.

In general, sales of service that do not involve the transfer of tangible personal property are not subject to tax in Illinois. See 86 Ill. Adm. Code 140.101. The Department does not consider the viewing and downloading of video, text and other data over the internet to be the transfer of tangible personal property. Therefore, such viewing and/or downloading activity over the internet would not be subject to liability under the Retailers' Occupation Tax Act, Use Tax Act, Service Occupation Tax Act, or Service Use Tax Act. Please note, however, the transfer of any canned software (or update of canned software) is considered the transfer of tangible personal property and will be subject to Retailers' Occupation Tax and Use Tax liability. Sales of canned software are taxable regardless of the means of delivery. See 86 Ill. Adm. Code 130.1935(a). For instance, the transfer or sale of canned software downloaded electronically would be taxable.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M. Boggess
Associate Counsel

DMB:msk