

Charges for data processing and information retrieval are not taxable. See 86 Ill. Adm. Code 495.100(c). If retailers provide both transmission (such as telephone line charges) and data processing services, the charges for each must be separately stated and identified in the books and records of the retailers. See 86 Ill. Adm. Code 495. (This is a GIL.)

March 19, 2009

Dear Xxxxx:

This letter is in response to your letter dated June 10, 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:

Because of tax laws changes for states from time to time we are just checking with your state on a couple of services for sales and use taxes.

Are EDI Services taxable for Illinois? This would be for basic EDI services, EDI processing fees, monthly mailbox fees, and monthly mailbox data fees?

Also, are internet services taxable with your state where a client from your state uses a program over the internet? This program is not downloaded but uses it from our website.

If you can give me information on where to find any of this information on your state's website so I can print it for our records, that we get [sic] appreciated.

Thank you for your help in this matter.

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. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to your client, then no Illinois Retailers' Occupation Tax or Use Tax would apply.

Generally, 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, sales of "canned" computer software are taxable retail sales in Illinois. Sales of canned software are taxable regardless of the means of delivery. For instance, the transfer or sale of canned computer software downloaded electronically would be taxable. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See subsection (c) of 86 Ill. Adm. Code 130.1935. Custom computer programs or software must be prepared to the special order of the customer. Charges for updates of canned software are fully taxable pursuant to Section 130.1935. If the updates qualify as custom software under subsection (c) of Section 130.1935, they may not be taxable.

The Department has been holding information requests regarding computer software hosting and Application Service Providers (ASPs) to determine the appropriate taxation of these types of arrangements. We believe that the proper forum for providing this type of guidance is through a formal administrative rulemaking process rather than through individual inquires.

We are unable to determine if the services you provide include the sale of telecommunications. The Illinois Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons. 35 ILCS 630/3 and 4. The Department's regulations for this tax are found at 86 Ill. Adm. Code Part 495. In addition, please refer to the Simplified Municipal Telecommunications Tax Act. 35 ILCS 636/5-1 *et seq.*

Charges for data processing and information retrieval are not taxable. See 86 Ill. Adm. Code 495.100(c). If retailers provide both transmission (such as telephone line charges) and data processing services, the charges for each must be separately stated and identified in the books and records of the retailers. If such charges are not separately stated in this manner, then all charges are taxable. See 86 Ill. Adm. Code 495.100(m). For information regarding the calculation of charges for that portion of the interstate inter-office telecommunications provided in Illinois see 86 Ill. Adm. Code 495.100(n)(3).

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,

Richard S. Wolters
Associate Counsel

RSW:mzk