

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. (This is a GIL.)

March 24, 2009

Dear Xxxxx:

This letter is in response to your letter dated August 25, 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:

Please be advised that I represent an entity that is currently being formed.

At this time it is anticipated that the entity and its server will be located in the State of Texas.

This entity will provide porker [sic] gaming lesson via the internet.

Individuals will be offered four (4) levels of training as follows:

- **Basic-** This level will provide basic porker [sic] training. Individuals will be charged \$19.95 annually.
- **Silver-** The level will provide additional training above the basic level. Individuals will be charged \$49.95 annually.
- **Gold-** This level will provide advanced training. Individuals will be charged \$49.95 annually.
- **Platinum** - This level will provide the highest level of training. Individuals will be charged \$299.00 annually.

In addition, individuals will be able to purchase a "starter kit" for \$24.95 which can be downloaded from the website.

Platinum level individuals will be able to refer other individuals to this site and will receive a payment for these referrals.

Rulings Requested

- Are the fees subject to sales tax by your state?
- Is the downloadable starter kit subject to sales tax by your state?
- If [sic] the company subject to any business activity taxes by your state? Business activity taxes would be income, franchise, business and occupational, gross receipts etc.

Thank you for your response.

DEPARTMENT'S RESPONSE:

This letter concerns any liability for sales and use taxes in this State. A separate letter has been sent to you regarding any Illinois Income Tax liability you might incur. Your letter states that your client will offer poker gaming lessons and training over the internet for an annual charge. Your letter does not indicate whether the purchaser will receive anything of value in addition to the lessons and training in exchange for the annual charge. Therefore, we can only provide general information relevant to your inquiry.

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 the customers, then no Illinois Retailers' Occupation Tax or Use Tax would apply. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailers at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

The Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to a customer incident to the services being provided then no Illinois Service Occupation Tax or Service Use Tax would apply. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Your letter does not provide any information regarding the "starter kit" other than to state that it is downloaded from a website. 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). In the event the kit contains computer software, please be advised that generally, sales of "canned" computer software are taxable retail sales in Illinois under the Retailers' Occupation Tax Act. Sales of canned software are taxable regardless of the means of delivery. Therefore, the transfer or sale of canned computer software downloaded electronically would be taxable. Charges

for updates of canned software are fully taxable pursuant to Section 130.1935. However, if the computer software consists of custom computer programs, then the sales of such software may not be a taxable retail sale. See 86 Ill. Adm. Code 130.1935(c). Custom computer programs or software must be prepared to the special order of the customer. If updates qualify as custom software under Section 130.1935(c), they may not be taxable.

If computer software is licensed and the license of computer software meets all of the criteria provided in subsection (a)(1) of Section 130.1935, neither the transfer of the software nor the subsequent software updates will be subject to Retailers' Occupation Tax. However, a license of canned software is subject to Retailers' Occupation Tax liability if all of the criteria set out in 86 Ill. Adm. Code 130.1935(a)(1) are not met.

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:msk