

This letter discusses sales of software. See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

March 27, 2009

Dear Xxxxx:

This letter is in response to your letter dated July 2, 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:

The purpose of this letter is to verify whether or not the following particular program fees are taxable. The nearest document that I could find was Section 130.1935 for Computer Software.

My company designs and installs custom room integration. This includes designing the programs needed for the function of the products installed. These products would include projectors, screens, phones, cameras, televisions, window shades, etc.

Each room is created specifically for the client's needs and environment. Because each room is different each program is different. We do, however have modules that we created for a specific part that may be used within the program. In that case the program is still 90% unique. The programs created generally cannot be sold multiple times to the same customer for multiple rooms.

The fee includes license codes purchased from our vendors that are needed to make the products and programs work.

Part C of Section 130.1935 states that customer programs are tax exempt if the customer's use requires an analysis of the customer's requirements by the vendor (my company) AND the program requires adaptation by the vendor to be used in a specific environment.

My questions are: 1) Do the programs we are designing fall under these guidelines as the program is loaded onto a computer to control the functions? 2) Does the fact that we create the programs qualify them to be custom made and thus fall within this exemption category? 3) Does the inclusion/purchase of a license or access code change the qualifications of the programs?

As my company designs our rooms based on the customer's requests and the program is used for the particular room, I believe they would qualify to be tax exempt. If you decide that the program is not exempt from tax, please point me to where I might find the answer of whether or not these programs are tax exempt?

DEPARTMENT'S RESPONSE:

Your letter identifies the relevant Department's regulation, "Computer Software" at 86 Ill. Adm. Code 130.1935. Generally, sales of "canned" computer software are taxable retail sales in Illinois. Canned computer software is considered to be tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means, or other media. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. 86 Ill. Adm. Code 130.1935.

Custom computer programs or software is computer software that is prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See Section 130.1935(c)(3).

With what little information you have provided, and in the context of a General Information letter, we cannot provide a definitive ruling regarding whether real and substantial changes are made to the programs or creation of program interfacing logic.

Your letter indicates the fee you charge to your customers includes license codes that are needed to make the products and programs work. It is unclear from your letter what your customers receive with the transfer of the license codes to them. If the customers receive a license of computer software 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:mks