

Information or data that is electronically downloaded is not considered the transfer of tangible personal property in this State. See 86 Ill. Adm. Code 120.2105. (This is a GIL.)

November 30, 2011

Dear Xxxxx:

This letter is in response to your letter dated October 31, 2011, 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:

This is a formal request for a private letter ruling, on behalf of our client. Our client would like to receive a formal recognition as to the taxability of their products/services as described in the factual statement attached here. Also enclosed is a Power of Attorney.

If you have any questions, please direct your concerns to the following:.....

Your factual statement reads as follows:

Facts

CLIENT is a not-for-profit organization focused on the adoption and implementation of CLIENT Standards in the healthcare industry to improve patient safety and supply chain efficiency.

CLIENT charges its customers (referred to as 'trading partners') for the use of a prefix, referred to as a ###, which identifies a specific trading partner (supplier or provider), within the ### Registry (discussed below). This ### is a unique prefix composed of numbers assigned to a trading partner which identifies that trading partners' location(s) in the database. These prefixes are used solely for use in the SERVICE-2 and are not

interchangeable between users. The prefix is assumed to be intangible; no personal property is transferred to the customer.

In addition, CLIENT offers two services available through the use of the internet; the SERVICE-1 and the SERVICE-2. These services are in addition to the fees from the activities stated above.

The SERVICE-1 is a subscription-based electronic information service to communicate and manage pertinent information concerning product recalls in an efficient and timely manner between manufacturers, distributors, and regulatory agencies. The goal is to expedite a way for manufacturers to communicate this information. Subscribers can either provide or receive notifications of product recalls and market withdrawals. The cost of the service is based on the purchasers' sales volume and the number of authorized users. No tangible personal property is transferred with this service.

The SERVICE-2 is designed to allow healthcare providers and suppliers to use an integrated set of standards to locate products. The SERVICE-2 is an online database containing locations of trading partners (suppliers and providers). The location data includes items such as postal addresses, a phone number, type of business, and purpose for that location. All subscribers have access to the entire database. Subscribers can download or see every location in the SERVICE-2 without any additional subscriptions. A subscriber can choose to 'subscribe' to a ### or set of ###s so that if any information is changed or updated then that subscriber will be notified. The company's servers are located in Illinois and STATE. No tangible personal property is transferred with this service.

Issue

We request your opinion regarding the proper application of Illinois' sales & use tax laws with respect to the internet based access of information and services provided in conjunction with the Rapid Recall Exchange and the SERVICE-2.

Discussion

Based on the statutory provisions and guidance issued, it is our opinion that the services provided by CLIENT should be characterized as a nontaxable information service. Generally, the delivery of data or information services via the internet, and the general sales of professional or personal services are not subject to sales or use tax. The overall purpose of the services provided by CLIENT is to facilitate the sharing of pertinent product information between vendors and distributors via on [sic] online application; no exchange of tangible personal property occurs.

We respectfully request the Illinois Department of Revenue's written determination concerning the above-referenced issues.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm.

Code 1200.110(a)(4). Further, the Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject to the request, the Department will decline to issue a letter ruling on the subject." 86 Ill. Adm. Code 1200.110(a)(3)(D). The Department declines to issue a Private Letter Ruling since its regulations are dispositive of the subject of your request.

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. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. 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 retailer 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.

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, canned computer software is considered taxable tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. See 86 Ill. Adm. Code 130.1935. If the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See Section 130.1935(c). 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 Section 130.1935(c), they may not 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