

ST 14-0033-GIL 07/10/14 SALE OF SERVICE

If no tangible personal property is transferred to the customer, then no Illinois Retailers' Occupation Tax or Service Occupation Tax would apply. See 86 Ill. Adm. Code Parts 130 and 140. (This is a GIL.)

July 10, 2014

Dear Xxxx:

This letter is in response to your letter dated May 7, 2014, 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](http://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:

A vendor we utilize for software services has begun assessing Illinois sales tax on a portion of its monthly invoice. The tax is being assessed on third party mailing services. COMPANY ("COMPANY") operates self storage facilities and Vendor (Vendor) is the software provider. The Vendor software product, PRODUCT, is utilized for the management of tenant accounts including rent roll management, application of tenant payments, etc. As part of Vendor's software service, they also provide for third party mailings to COMPANY tenants primarily related to producing and mailing monthly invoices and tenant late letters to COMPANY tenants. These mailings are based upon templates/forms ("Form Letters") which reside within the PRODUCT software application with modifications to these templates based upon specific COMPANY business requirements. In providing this service, Vendor compiles information from the PRODUCT system which determines if mailings are required based upon specific triggers (i.e. days past due for late letters, and rental due date for invoices) and populates the aforementioned Form Letters to prepare letters for mailing. These Form Letters are then sent off to a third party mailing service where postage is applied and mailings are sent. COMPANY is billed for the service provided in preparing, handling, and mailing the letters. I have had two separate conversations with two separate Agents of the Illinois Department of Revenue 4/1/14 (xxxx) and 5/5/14 (xxxx) and in each instance the Agents have concluded that these services are not taxable for the following reasons:

- 1.) Postage is not taxable;
- 2.) There is no sales tax on printed forms (with reference to Part 130-2000) as the printed forms have no value to anyone but COMPANY; and

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3.) There is no sales tax on services in Illinois.

The Vendor has stated that they have also called the Illinois DOR and were told that the service was taxable as it was part of a "bundled" sale. In communicating this to the Agent on my 5/5/14 call, I was told by the Agent that this was incorrect and that the transaction was not taxable and that there is not a "bundling" concept that would make the transaction taxable. As the Vendor is still contending that the transactions are taxable, COMPANY is requesting a Letter Ruling from the Illinois Department of Revenue so both COMPANY and the Vendor will have clarity and conclusion to this issue (please see attached email communications between COMPANY and Vendor for further detail). As such, I am requesting a Letter Ruling regarding the taxability of the transaction outlined above be completed and mailed to my attention at the following address:

COMPANY

Attn: Xxxxxx

ADDRESS

CITY, STATE, ZIPCODE

I appreciate your assistance with this matter. Please do not hesitate to contact me directly at xxx-xxx-xxxx should you have any questions or require any further information regarding the request above. My email address is xxxxxxxxxxxxxx.

#### **DEPARTMENT'S RESPONSE:**

We cannot provide you with a specific answer to your questions without reviewing invoices for the products/services you receive as well as any licensing agreements you may have signed for the use of a third party's software products. In addition, without reviewing COMPANY's specific contractual obligations with Vendor and the third-party mailing service, and without knowing the registration status of the servicemen involved, the Department is without sufficient information to provide you with a specific response. However, I hope the following information regarding Retailers' Occupation Tax, Use Tax, Service Occupation Tax and Service Use Tax are helpful.

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 35 ILCS 120/2; 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 35 ILCS 105/3; 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.

Retailers' Occupation and Use Taxes do not apply to sales of service. 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 the transactions you are inquiring about do not involve the transfer of any tangible personal property to your company, then they generally would not be subject to Service Occupation Tax, or Service Use Tax.

It is possible that the scenario you have described could be considered a service transaction that may result in either Service Occupation Tax or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. For general information, see 86 Ill. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

A serviceman's liability may be calculated in one of four ways: 1. Separately stated selling price of tangible personal property transferred incident to service; 2. 50% of the serviceman's entire bill; 3. Service Occupation Tax on the serviceman's cost price if he is a registered de minimis serviceman; or, 4. Use Tax on the serviceman's cost price if he is a de minimis serviceman not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale price of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the serviceman's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106. These methods result in the customer incurring a Service Use Tax liability. See 86 Ill. Adm. Code 160.101.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred incident to the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. This method also results in the customer incurring a Service Use Tax liability.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108. Under this method the customer incurs no Service Tax liability.

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When a serviceman contracts out all or a portion of the service that he will provide, he is acting as a primary serviceman in a multi-service situation. As a primary serviceman, he engages the services of a secondary serviceman in order to obtain all or part of the product and services desired by the service customer. Whether the primary and secondary servicemen are registered or de minimis will determine at what point Service Occupation Tax or Use Tax will be incurred. See 86 Ill. Adm. Code 140.145 to determine the tax incurred in these situations. Generally, when a primary serviceman purchases tangible personal property from a secondary serviceman, the primary serviceman shall determine his cost price either by using the separately-stated selling price of tangible personal property set forth on the invoice from the secondary serviceman or, if no selling price is separately stated, 50% of the total invoice including labor and service charges, in the absence of proof (e.g., the secondary serviceman's purchase invoices showing his cost price) of the consideration paid by the secondary serviceman for the purchase of such property. Depending on whether each of the servicemen are registered servicemen in Illinois, 86 Ill. Adm. Code 140.145(c) may apply, and certificates of resale may be given for purchases of services involving the transfer of tangible personal property which will be transferred incident to a subsequent sale of service.

We cannot determine, based on the limited information contained in your letter, whether your company purchases any canned software, which is considered tangible personal property. See 86 Ill. Adm. Code 130.1935. It seems that Vendor maintains control of its own software and provides services to your company. However, if COMPANY purchases canned software from Vendor, this would be a taxable transaction unless the license meets all of the requirements in 86 Ill. Adm. Code 130.1935.

We also cannot determine, based on the limited information contained in your letter, whether any sales are made into interstate commerce. An exemption is available for servicemen on property resold as an incident to a sale of service under an agreement by which the serviceman is obligated to make physical delivery of the goods from a point in this State to a point outside this State, **not to be returned to this State**, provided such delivery is actually made. See 86 Ill. Adm. Code 140.501(b). Please note unregistered de minimis servicemen may also claim the interstate commerce exemption. See 86 Ill. Adm. Code 140.108(a)(2)(B).

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

Very truly yours,

Cara Bishop  
Associate Counsel

CB:ikm