

Information or data that is electronically downloaded is not considered the transfer of tangible personal property in this State. See 86 Ill. Adm. Code 130.2105. (This is a GIL.)

February 24, 2010

Dear Xxxxx:

This letter is in response to your letter dated November 5, 2009, 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:

I write games and I sell them on the internet to clients in Illinois, the US and worldwide. The files for the games are automatically emailed to the clients in Adobe Acrobat format (pdfs) and they can also download them from the website. Nothing is physically mailed to the clients. They print the game themselves using there [sic] own paper. So as they are not tangible personal property, should I be paying sales tax on these products (ie charging an extra 10.25% for the clients who live in Illinois)?

Thank you for your assistance in clarifying this matter.

DEPARTMENT'S RESPONSE:

Information or data that is electronically downloaded is not considered the transfer of tangible personal property in this State. See 86 Ill. Adm. Code 130. 2105(a)(3). Please note that canned (prewritten) computer software is considered 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.

Accordingly, if one is not transferring any canned (prewritten) computer software and no tangible personal property of any kind is being transferred, then no Retailers' Occupation Tax or Use Tax would be incurred on the transaction.

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