

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.)

May 14, 2010

Dear Xxxxx:

This letter is in response to your letter dated December 21, 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:

We represent a client with sales of various revenue streams. We are attempting to determine if any of its revenue streams are subject to your State's sales taxes. We would appreciate your opinion as to whether the following types of products and services are exempt or taxable in your State.

Article Service:

Our client sells articles from scientific, technical and medical journals to researchers. In most cases, our client earns a transaction fee and a copyright fee. Other fees may be added as well, such as referencing charges (to clean up a citation) or extra charges to customize the format of a particular document used for Food & Drug Administration submissions. In cases where the customer already owns the document, but would like to copy it, a copyright only fee may be assessed. In all cases where our client clears the copyright for a customer, our client must pay that copyright to the publishers, 3rd party vendors or a copyright clearance organization such as the CCC (Copyrights Clearance Center).

The following is a list of the most common delivery methods used by our client:

- Regular mail – US Postal Service
- Courier (FedEx, DHL, etc)

Facsimile (Fax)
Electronic delivery to E-mail address

Are the transaction fees from selling the articles are [sic] taxable? Are the copyright fees charged to the customers taxable? Would any of the above delivery methods exempt the sale?

Reprint Sales

Reprints are bulk orders of high quality documents. They are not just photocopies; they are actual copies from the publisher. The reprints are delivered by the following means:

Delivered to the client's customers by the US Postal Service directly from the publisher.

Downloaded by the customer from our client's server.

Are reprint sales taxable in your state? Would any of the above delivery methods exempt the sale?

Software

Our client sells software which turns a customer's computer, printer, and scanner into a state-of-the-art document transmission station on the internet. An actual CD may be mailed to a customer or the software may be downloaded by the customer from our client's website.

If the software is electronically downloaded by the customer, would the sale be taxable?

If the CD containing the software is mailed the customer, would the sale be taxable?

If the software is electronically downloaded by the customer, and a CD copy is also mailed to the customer, would the sale be taxable?

License Fees

These are software licensing fees paid by the customers so they can use the software that resides on the client's servers. It is a web-based solution to access the client's library. The software is a document sourcing/delivery platform which automates and manages the document delivery process. The platform allows the customers to search, discover, and order citations from the client's catalog of published scientific, technical, and medical contents. The software itself is not delivered to the customers.

Are the above license fees taxable?

Staffing Service

A staffing service where our client provides highly skilled professionals to provide expertise in all aspect [sic] of information center management, from complete library management to specialized services such as search and discovery, document delivery, indexing, cataloging, acquisitions, management, order fulfillment, research, weeding, and taxonomy. Our client's employees can work on-site at the customer's location, or

remotely. Our client will provide staffing services for both short-term and long-term engagements. The staffing personnel provided by our client are all employees of the client.

Is the above staffing service taxable?

Outsourcing Service

This service allows customers to outsource the management of their information center to our client. All aspects of providing an information center is covered. This includes search and discovery of publications, collection management and licensing, and document sourcing and delivery. Customers pay a management fee for this service.

Is the above management fee taxable?

Document Storage and Retrieval Service

A storage, maintenance, and retrieval service whereby a customer's physical print collection is stored off-site at our client's facility and maintained by our client's personnel. Documents requested from our client's facility can be delivered in two hours or less depending on the customer's specific copyright clearance agreement. High quality reproduction of the document is delivered to the customer. Our client earns a maintenance fee for this service.

Is the above maintenance fee taxable?

We appreciate your attention to our questions. Please do not hesitate to contact me if you have any questions. You may send your response to the address shown on this letterhead.

DEPARTMENT'S RESPONSE

General information letters are used to direct taxpayers to the Department's regulations and other sources of information for general guidance. You may find the Department's general information letters helpful in regards to many of the issues raised in your request. The Department's "Sunshine Letter" rulings are located on the Department's Internet website under the heading of "Laws/Regs/Rulings." Issues regarding the taxation of software and software licenses may be found at 86 Ill. Adm. Code 130.1935.

FEES

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. 86 Ill. Adm. Code 140.101 and 160.101. However, if no tangible personal property is transferred incident to a sale of service, the Service Occupation Tax and Service Use Tax do not apply.

If the transactions you are inquiring about do not involve the transfer of any tangible personal property to the customer, then they generally would not be subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax.

SERVICE OCCUPATION TAX

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The 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 servicemen's entire bill;
- (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or
- (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are 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 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 servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

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 as an incident of 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. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

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.

Tangible personal property that is transferred incident to document retrieval services, such as the providing of copies of documents, could fall below the de minimis threshold. If this is the case, it would allow such servicemen to determine their tax base in any of the above methods. Historically, most service providers that qualify as de minimis and are not otherwise required to register with the

Department prefer to determine their tax base under the last method. Generally, processing charges, photocopy charges, document retrieval charges, and other such charges are considered sales of service, which are encompassed in the above discussion.

ELECTRONIC DOWNLOADS

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.

COMPUTER SOFTWARE

Generally, retail sales or transfers of "canned" computer software are taxable in Illinois regardless of the means of delivery. For instance, the sale or transfer of canned computer software downloaded electronically would be taxable. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See 86 Ill. Adm. Code 130.1935(c). If 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.

Please note that the Department believes that the proper forum for providing guidance regarding transactions involving computer software Application Service Providers (ASPs) is through a formal administrative rulemaking process rather than through individual inquires such as letter ruling requests. Unfortunately, I cannot provide you with a time frame as to when such a rulemaking process will be initiated. I recommend that you monitor the Department's website for information regarding when this rulemaking will be proposed.

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,

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