

This letter responds to an annual survey. See 86 Ill. Adm. Code, Parts 130, 140, 150 and 160. (This is a GIL.)

August 4, 2010

Dear Xxxxx:

This letter is in response to your letter dated June 4, 2010, 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:

ABC annually undertakes a major information collection effort with respect to the application of the tax laws of the states. ABC’s goal in gathering this information is to assemble and publish the *PUBLICATION*. As the market has shown, such a publication is a useful reference source for departments of revenue, attorneys, corporate tax departments, and public accounting firms.

ABC is in the process of updating the *PUBLICATION* for its 2011 annual edition. Accordingly, we ask for your state’s assistance in preparing this important publication. I have attached two Microsoft Word files—one for income tax and one for sales tax—to serve as this year’s questionnaire. The questionnaire follows the same format as in past years. (If you do not have a copy of your 2009 response, and it would be helpful to you in completing the 2010 questionnaire, please let me know and I will email you a copy.)

This year, the numbering scheme and the sequence of the questions remains essentially the same. Also, please note that the new questions are highlighted in red font. Therefore, you should be able to easily follow the changes from last year to this year. Because of anticipated time constraints for respondents, again this year we are asking that you only respond to the questions for which your answers require a change and the new questions. All unanswered questions will be considered the same as last year’s answer unless otherwise noted.

Please complete the 2010 questionnaire and return it by July 15, 2010. The enclosed questionnaire should be answered in accordance with laws in effect as of July 1, 2010. If there is legislation pending or recently enacted that would alter your answers, please explain any such changes that you are aware of at the time the questionnaire is completed.

Beginning in the fall 2000, ABC began a tuition assistance program for state department of revenue employees in appreciation for their assistance in publishing the PUBLICATION. A limited amount of tuition assistance is available for courses in ABC's Online Graduate Certificate in State and Local Taxation. This Certificate program is the first of its kind in the nation to be offered totally online. To receive the Certificate, students must complete the four-course curriculum. For further information about the program or available tuition assistance contact INDIVIDUAL.

If you have any questions about the questionnaire or individual questions, please contact me. Thank you for your continued cooperation and support. Your contributions are extremely valuable in maintaining the quality of this outstanding reference work. A complimentary copy of the PUBLICATION will be sent to you when it is published next year.

Your new questions are as follows:

CLOUD COMPUTING SERVICES

- Does your state impose sales tax on the following “cloud computing services?”
 - Infrastructure-as-a-Service – Providing virtual servers with unique IP addresses and blocks of storage on demand. Yes No
 - Platform-as-a-Service – A set of software and product development tools hosted on the provider’s infrastructure. Yes No
 - Software-as-a-Service – Vendors supply hardware infrastructure, software, and a front-end portal by which the user interacts with the provider.
 Yes No
- If tax is imposed on any of these services, how is the point of taxation determined?
 - Location of user Location of service
 - Office of cloud computing provider
 - Other location, explain:

TRAVEL-RELATED EXPENSES

- Does your state impose sales tax on the following travel-related charges?
 - Taxi cab fares Food and beverage charges Hotel charges
 - Limo fees
 - Car rental charges
 - Airline tickets purchased in your state for departure in your state
 - Airline tickets purchased in your state for departure in another state
- Does your state impose other local taxes on the following travel-related charges?
 - Taxi cab fares Food and beverage charges Hotel charges
 - Limo fees
 - Car rental charges

- Airline tickets purchased in your state for departure in your state
- Airline tickets purchased in your state for departure in another state
- If local taxes are imposed on these charges, what type of local tax is imposed?
 - City County Other, explain:
- For hotels, car rentals, and airline tickets booked over special Internet Web sites, what is the measure of sales tax in your state?
 - Amount charged by Internet booking service for car rental, hotel, or airline ticket
 - Amount charged by service provider to the Internet booking service
 - Other, explain:

SALES TAX ON SCAFFOLDING

- Does your state impose sales tax on the rental charges for the use of scaffolding at a construction or other job site? Yes No
- If YES, is tax also imposed on the following related charges?
 - Delivery Set-up/Installation
 - Tear-down charges Pick-up charges
 - Movement after installation of the scaffolding or rearrangement of scaffolding after initial set-up
- If any of the above charges are tax-exempt, is a separate contract required for the separate charge to be treated as exempt? Yes No
- Which charges, if any, are tax-exempt?

EXCISE TAX APPLICATION

- Does your state impose an excise tax on gasoline? Yes No
 - If YES, what is the rate of tax? _____
 - If YES, is sales tax applied to the price of gasoline, including the amount of excise tax?
 - Excise tax included in sales tax base
 - Excise tax not included in sales tax base
- Does your state impose an excise tax on tobacco products? Yes No
 - If YES, what is the rate of tax? _____
 - If YES, is sales tax applied to the price of tobacco products, including the amount of excise tax?
 - Excise tax included in sales tax base
 - Excise tax not included in sales tax base
- Does your state impose an excise tax on alcohol, beer, and wine products? Yes
 No
 - If YES, what is the rate of tax? _____
 - If YES, is sales tax applied to the price of alcohol, beer, and wine products, including the amount of excise tax?
 - Excise tax included in sales tax base
 - Excise tax not included in sales tax base

DEPARTMENT'S RESPONSE:

Cloud Computing Services

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.

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.

The Department has not adopted any regulations specifically addressing the taxability of the types of services you have identified. Please note that the Department believes that the proper forum for providing guidance regarding transactions involving computer software Application Service Providers (ASPs) and software hosting 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.

Travel-related Expenses

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. Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers

The Hotel Operators' Occupation Tax Act ("HOOT") imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel, as defined in the Act. The tax is imposed at the rate of 6% of 94% of the gross rental receipts. HOOT defines "hotel" to include any building or buildings in which the public may, for consideration, obtain living quarters, sleeping or housekeeping accommodations. 35 ILCS 145/2(1). See also 86 Ill. Adm. Code 480.101, which explains the nature, rate and scope of HOOT.

HOOT defines "rent" as "the consideration received for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature." 35 ILCS 145/2(6). The definition of "rent" must be read in conjunction with the term "occupancy." HOOT defines "occupancy" as "the use or possession, or the right to the use or possession, of any room or rooms in a hotel for any purpose, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms." 35 ILCS 145/2(3).

There is no corresponding tax imposed upon hotel room occupants. Rather, a hotel operator may reimburse himself for his HOOT liability by collecting a corresponding reimbursement charge from a room occupant. Although a hotel operator may state the reimbursement charge as "hotel tax" on his bill, it is nothing more than a reimbursement charge.

Persons who are engaged in the business of renting automobiles in Illinois under rental terms of one year or less are subject to the Automobile Renting Occupation and Use Tax. 35 ILCS 155/1 *et seq.* See 86 Ill. Adm. Code 180.101. This tax is imposed at the rate of 5% of the gross receipts from such business. "Gross receipts" from the renting of tangible personal property or "rent," means the total rental price or leasing price. See also, 86 Ill. Adm. Code 180.120 and 180.125.

State sales taxes are not imposed on taxicab receipts.

Food sold at retail in Illinois is subject to Retailers' Occupation Tax and Use Tax. Items that qualify as food, drugs and medical appliances are taxed at the low State rate of 1%. The Department's regulation regarding the appropriate tax rates for food can be found at 86 Ill. Adm. Code 130.310. Food that is to be consumed off the premises where it is sold (other than alcoholic beverages, candy, soft drinks, and food that has been prepared for immediate consumption) is taxed at the rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. Candy is defined as a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation that contains flour or requires refrigeration.

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate (6.25% State rate) on all food sales (including bulk or grocery type items). However, if establishments sell both food that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax (1%) may be charged on the bulk or grocery type items (other than alcoholic beverages, candy, soft drinks, and food that has been prepared for immediate consumption) if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts. See 86 Ill. Adm. Code 130.310(b)(3).

Food and soft drinks that are sold by the airline to passengers on flights while over Illinois are subject to Retailers' Occupation Tax. Airlines may utilize a revenue miles formulary approach to determine the receipts from sales that are attributable to Illinois on flights over the State. In addition, the airline owes Use Tax on food and beverages that it gives away to passengers.

The sale of airline tickets is not considered a sale of tangible personal property and is not subject to the Retailers' Occupation Tax.

The Department also administers the following taxes imposed by units of local government:

Home Rule County Retailers' Occupation Tax (55 ILCS 5/5-1006); Home Rule County Service Occupation Tax (55 ILCS 5/5-1007). No rate limit; rate established by county.

Special County Retailers' Occupation Tax for Public Safety or Transportation (55 ILCS 5/5-1006.5(a)); Special County Service Occupation Tax for Public Safety or Transportation (55 ILCS 5/5-1006.5(b)). No rate limit; rate established by county.

County School Facility Retailers' Occupation Tax (55 ILCS 5/5-1006.7(a)); County School Facility Service Occupation Tax (55 ILCS 5/5-1006.7(b)). Limited to 1%.

Rock Island County Retailers' Occupation Tax (55 ILCS 5/5-1008.5(b)); Rock Island County Service Occupation Tax (55 ILCS 5/5-1008.5(c)). Set at 0.25%.

Home Rule Municipal Retailers' Occupation Tax (65 ILCS 5/8-11-1); Home Rule Municipal Service Occupation Tax (65 ILCS 5/8-11-5). No rate limit; rate set by municipality.

Non-Home Rule Municipal Retailers' Occupation Tax (65 ILCS 5/8-11-1.3); Non-Home Rule Municipal Service Occupation Tax (65 ILCS 5/8-11-1.4). Limited to 1%.

Non-Home Rule Municipal Retailers Occupation Tax; Municipalities Between 20,000 and 25,000 (65 ILCS 5/8-11-1.6); Non-Home Rule Municipal Service Occupation Tax; Municipalities Between 20,000 and 25,000 (65 ILCS 5/8-11-1.7). No rate limit.; rate set by municipality

Chicago Soft Drink Tax (65 ILCS 5/8-11-6b(b)). Limited to 3%.

Business District Retailers' Occupation Tax (65 ILCS 5/11-74.3-6(b)); Business District Service Occupation Tax (65 ILCS 5/11-74.3-6(c)). Limited to 1%.

Salem Civic Center Retailers' Occupation Tax (70 ILCS 200/245-12(b)); Salem Civic Center Service Occupation Tax (70 ILCS 200/245-12(c)). Limited to 1%.

Metropolitan Pier and Exposition Authority Retailers' Occupation Tax (70 ILCS 210/13(b)) (Only on food for immediate consumption. No SOT.). Set at 1%.

Flood Prevention Retailer's Occupation Tax (70 ILCS 750/25(a)); Flood Prevention Service Occupation Tax (70 ILCS 750/25(b)). Set at 0.25%.

Metro-East Park and Recreation District Retailers' Occupation Tax (70 ILCS 1605/30(a)); Metro-East Park and Recreation District Service Occupation Tax (70 ILCS 1605/30(b)). Set at 0.10% (this is the only exception to the 0.25% increment rule).

Metro-East Mass Transit District Retailer's Occupation Tax (70 ILCS 3610/5.01(b)); Metro-East Mass Transit District Service Occupation Tax (70 ILCS 3610/5.01(c)). Limited to 0.75% (currently 0.25% in Madison Co. and 0.75% in St. Clair County) (St. Clair imposes an additional \$20 fee or 0.005% rate on cars – whichever is less).

Regional Transportation Authority Retailers' Occupation Tax (70 ILCS 3615/4.03(e)); Regional Transportation Authority Service Occupation Tax (70 ILCS 3615/4.03(f)). Set at 1% on general merchandise in Cook County and 0.75% on all items in Collar Counties (DuPage, Kane, Lake, McHenry, Will). Includes qualifying food and drugs.

County Water Commission Retailers' Occupation Tax (70 ILCS 3720/4(b)); County Water Commission Service Occupation Tax (70 ILCS 3720/4(c)). Set at 0.25%.

For information regarding the local taxes imposed in specific municipalities, see the Tax Rate Finder on the Department's website.

For information regarding taxes administered and imposed by units of local government, please see the Illinois Compiled Statutes.

Sale Tax on Scaffolding

For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if a lessor is guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction. All receipts received by a lessor/retailer under a conditional sales contract are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010.

A true lease generally has no buy out provision at the close of the lease. If a buy-out provision does exist, it must be a fair market value buy-out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property.

The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability. As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Under Illinois law, lessors may not "pass through" their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where the lessees agree to reimburse the lessors for the amount of the tax paid, then the lessees are obligated to fulfill the terms of the private contractual agreements.

The City of Chicago administers the Chicago Personal Property Lease Transaction Tax. Since the Department does not administer the City of Chicago's lease tax, it cannot speak to the taxability of items under that tax.

Excise Tax Application

The Motor Fuel Tax law imposes a tax on the privilege of operating motor vehicles upon the public highways and recreational-type watercraft upon the waters of this State. 35 ILCS 505/2. Beginning January 1, 1990, the rate of tax is \$0.19 per gallon. In calculating taxable receipts for purposes of the Retailers' Occupation Tax, sellers of motor fuel for use or consumption may deduct the Motor Fuel Tax collected by such sellers with respect to such sales. 86 Ill. Adm. Code 130.435(a).

Illinois taxes cigarettes under the Cigarette Tax Act (35 ILCS 130/1 *et seq.*) and the Cigarette Use Tax Act (35 ILCS 135/1 *et seq.*). Tobacco products are taxed under the Tobacco Products Tax Act of 1995 (35 ILCS 143/10-1 *et seq.*).

The Cigarette Tax Act imposes a tax upon persons engaged in business as a retailer of cigarettes in this State at the rate of 98 cents per package of 20 cigarettes. The Cigarette Use Tax

Act imposes a tax upon the privilege of using cigarettes in this State at the rate of 98 cents per package of 20 cigarettes. "Cigarette" is construed to mean: any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, and the wrapper or cover of which is made of paper or any other substance or material except tobacco.

The Tobacco Products Tax Act of 1995 applies to sales of tobacco products. Under this act, "a tax is imposed on any person engaged in business as a distributor of tobacco products, as defined in Section 10-5, at the rate of 18% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in this State." "Tobacco products" "means any cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweeping of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include cigarettes or tobacco purchased for the manufacture of cigarettes by cigarette distributors and manufacturers defined in the Cigarette Tax Act and persons who make, manufacture, or fabricate cigarettes as a part of a Correctional Industries program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility." 35 ILCS 143/10-5.

The amount of the retail selling price of cigarettes represented by the Cigarette Tax or Cigarette Use Tax, or the retail price of tobacco products represented by the Tobacco Products Tax, may not be deducted from the seller's gross receipts when computing the Retailers' Occupation Tax.

The Liquor Control Act of 1934 imposes a tax upon the privilege of engaging in business as a manufacturer or as an importing distributor of alcoholic liquor other than beer at the rate of \$0.185 per gallon for cider containing not less than 0.5% alcohol by volume nor more than 7% alcohol by volume, \$1.39 per gallon for wine other than cider containing less than 7% alcohol by volume, and \$8.55 per gallon on alcohol and spirits manufactured and sold or used by such manufacturer, or as agent for any other person, or sold or used by such importing distributor, or as agent for any other person. A tax is imposed upon the privilege of engaging in business as a manufacturer of beer or as an importing distributor of beer at the rate of \$0.231 per gallon on all beer manufactured and sold or used by such manufacturer, or as agent for any other person, or sold or used by such importing distributor, or as agent for any other person.. 235 ILCS 5/8-1 *et seq.*

No amount is deducted from gross receipts on account of the taxes imposed by the Liquor Control Act in computing Retailers' Occupation Tax liability. 86 Ill. Adm. Code 130.435(a).

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

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