

If no tangible personal property is transferred to customers, then no Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax Act, or Service Use Tax liability would be incurred on the sales to those customers. See 86 Ill. Adm. Code 130.301. (This is a GIL.)

December 22, 2010

Dear Xxxxx:

This letter is in response to your letter dated July 15, 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](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:

On behalf of our client COMPANY, we are formally requesting that the Department of Revenue (the 'Department') issue a private letter ruling regarding the applicability of Illinois retailers' occupation tax on COMPANY's new XYZ service offering. No audit or litigation is currently pending with the Department relating to the taxability of COMPANY's new XYZ service offering. To the best of the knowledge of COMPANY and to the undersigned, the Department has not previously ruled on the same or similar issue for COMPANY or any predecessor. This request is for COMPANY's new XYZ service offering and no taxes have accrued or will accrue prior to the issuance of the ruling with respect to the transactions, events, or facts contained in the request. COMPANY and the undersigned request that the Company's name, location, and Company specific information relating to its distribution and/or use of the aggregate materials be redacted from the publicly disseminated version of the private letter ruling. The following is a summary of facts surrounding our request.

### **Facts**

COMPANY is a STATE corporation registered to do business in the State of Illinois. COMPANY possesses a retailers' occupation tax permit to collect Illinois retailers' occupation tax for goods sold. COMPANY's corporate headquarters and principal executive offices are located in CITY/STATE. COMPANY is engaged in the business of

providing commercial information about the financial condition of businesses to its customers located throughout the US and abroad. This information is provided through COMPANY's database. This database enables customers to access select firmographic and financial information to mitigate credit and supplier risk, increase cash flow and drive increased profitability. Information gathering, analysis, formatting/explanation, and dissemination are conducted at COMPANY locations in either STATE or STATE2.

### **Core Service Offerings**

For a subscription fee, COMPANY customers will be able to access business information about potential or existing customers and suppliers through COMPANY's XYZ service offering. XYZ is an interactive, customizable web-based application that will offer users real-time access to COMPANY's complete and up-to-date global database of more than 110 million businesses for a subscription fee. XYZ's core service offering will allow customers to run searches and create customizable reports containing summary trade data, basic credit scores, legal filings, and general company information. For an additional fee, customers will be able to purchase upgraded data packages and workflow add-ons that provide additional data beyond that included with the base core service offering. The additional fees relating to the upgraded data packages will not be separately invoiced if purchased simultaneously with the XYZ core service offering, but rather included in the total annual subscription fee as a premium package. This is in contrast to the workflow add-ons which will be separately invoiced and discussed in further detail below. The customer will have the option of purchasing the upgraded data packages at a later date, in which case they will receive a separate invoice for the upgraded data packages. These upgraded data packages will come in the form of additional data that will be added to customized user reports. These upgraded data packages will include the following:

### **Upgraded Data Packages**

#### **PACKAGE1**

The PACKAGE1 will include access to data in the form of corporate linkage, visual family tree, and public filing information. Corporate linkage will be additional data in a generated report that displays other related companies to the subject entity. The visual family tree will be a summary of the corporate linkage shown in the form of a graphic or chart. Public filing information will be provided in the form of a summary and history of public filings and financial statements for the subject entity.

#### **PACKAGE2**

The PACKAGE2 will include access to data in the form of monitoring/alerts, credit limit recommendation, predictive scores, comprehensive credit scores, and fraud scores. Monitoring/alerts will be additional data which shows key company information that has changed since the last time the customer has viewed the report. The customer will have has [sic] the ability to receive email notifications of these changes as part of this feature. Credit limit recommendation will be additional data displaying COMPANY's recommendation of a conservative and aggressive credit limit based on COMPANY's scoring methodology. Predictive scores will be additional data measuring a company's likelihood for future success. Comprehensive credit scores will be additional data

showing details supporting predictive scores. Fraud scores will be additional data which assesses the likelihood that the company making a request for credit is fraudulent.

### PACKAGE3

The PACKAGE3 will include COMPANY \*\*\*, and detailed payment data. COMPANY \*\*\* will be additional data which will provide the weighted average of past trade payments. Detailed payment data will provide historical payment data including the number of delinquent payments and average high credit. This will be displayed as a section of a generated report displaying trade data by industry and time period reported.

### PACKAGE4

This will be additional data within XYZ that will enable a customer to view data from participating financial institutions on small business lending performance across the banking, credit card, and leasing industries. PACKAGE4 will combine the financial performance data with COMPANY's trade data to create decision-ready insight that can be used across the customer lifecycle for targeting, underwriting, and portfolio management/marketing. PACKAGE4 will be available to customers who participate in the PACKAGE4 program and purchase the PACKAGE3.

### PACKAGE5

Customers will be allocated an amount of data that they will be able to access for international entities as part of the XYZ core service offering. Once the allocated amount of PACKAGE5 has been exceeded, customers will be charged an additional fee for access to that data.

### PACKAGE6

The PACKAGE6 will allow customers to generate reports with a mix of the above data service options and will allow an unlimited quantity of inquiries into the XYZ system.

### **Workflow Add-ons**

In addition to upgraded data packages, users will be able to add to their XYZ service offering by purchasing workflow add-ons for an additional fee. Workflow add-ons will be separately invoiced from the XYZ core service offering and upgraded data packages. Workflow add-ons will include the following:

#### TOOL1

This will be a customizable web-based tool within XYZ that will enable a customer to establish rules and approval limits to automate credit decisions. The TOOL1 will allow companies to make immediate credit decisions on new customers. It will provide access to Equifax bureau and will have the ability to input trade and bank references. The TOOL1 will be hosted on the XYZ servers (customer will not receive software to install). The tool will be sold as an optional add-on to someone purchasing XYZ.

#### TOOL2

This will be an automated feature that will manage the risk of a customer's entire customer base by blending the customer's credit policy, the customer's accounts receivable data, and the latest and most complete COMPANY business information. A user will be able to load in a set of accounts and rules to trigger labeling for existing accounts (i.e., a credit indicator drops below a certain level the account gets flagged for review). The TOOL2 will be hosted on the XYZ servers (customer will not receive software to install). The tool will be sold as an optional add-on to someone purchasing XYZ.

### TOOL3

The TOOL3 will be an on-demand tool to help manage overall risk exposure. The tool will enable a user to load in invoice level trade details. The TOOL3 will then provide workflow information related to collection activities. The TOOL3 will be hosted on a 3<sup>rd</sup> party server (customer will not receive software to install). The tool will be sold as an optional add-on to someone purchasing XYZ.

### APPLICATION1

The APPLICATION1 will allow the user to create customizable credit application to meet their business needs. The application will be displayed on the internet through COMPANY's servers. The data entered into the application will then be fed into XYZ for the user to act on. XYZ will provide internal automatic alerts when an application is submitted. The APPLICATION1 will be sold as an optional add-on to someone purchasing XYZ.

### Web Services

This will be a web-based tool within XYZ that will allow for data, decisions, or other account information to be passed back and forth between COMPANY and customer systems. Web Services will allow for the integration of the TOOL1 and TOOL2. Web Services will be hosted on the XYZ servers (customer will not receive software to install). The tool will be sold as an optional add-on to someone purchasing XYZ core service offering.

### **Statement of Authorities**

The Illinois Administrative Code states, 'Information or data that is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, does not constitute the transfer of tangible personal property. These types of transactions represent the transfer of intangibles and are thus not subject to Retailers' Occupation and Use Tax. However, downloads of canned software, as defined more fully in Section 130.1935 of this Part, are subject to Retailers' Occupation and Use Tax.'<sup>1</sup>

Further, *Illinois Private Letter Ruling ST 04-0013-PLR* states that, if a taxpayer provides electronic business and financial information through a database accessed via the internet and no software or other tangible personal property is transferred to its customers, then no retailers' occupation tax, use tax, service occupation tax, or service use tax liability would be incurred on the downloads of database information.<sup>2</sup>

In the alternative, the Illinois Administrative Code states the following regarding computer software, 'Computer software means all types of software including operational, applicational, utilities, compilers, templates, shells and all other forms. Canned software is considered to be tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. The sale at retail, or transfer, of canned software intended for general or repeated use is taxable, including the transfer by a retailer of software which is subject to manufacturer licenses restricting the use or reproduction of the software. A license of software is not a taxable retail sale if:

- A) it is evidenced by a written agreement signed by the licensor and the customer;
- B) it restricts the customer's duplication and use of the software;
- C) it prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;
- D) the licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or of permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and
- E) the customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.<sup>3</sup>

COMPANY believes that there are no authorities contrary to the above statutes, regulations and administrative decisions.

### **Ruling Requested**

Please respond to the following questions:

1. Will COMPANY's XYZ core service offering and upgraded data packages be considered electronic information services and therefore exempt from Illinois retailers' occupation tax, will they be considered a non-taxable license of software and therefore not subject to Illinois retailers' occupation tax, or will they be considered canned software and therefore subject to Illinois retailers' occupation tax?
2. Will COMPANY's TOOL1, which will be an add-on to XYZ's core service offering, be considered electronic information services and therefore exempt from Illinois retailers' occupation tax, will it be considered a non-taxable license of software and therefore not subject to Illinois retailers' occupation tax, or will it be considered canned software and therefore subject to Illinois retailers' occupation tax?
3. Will COMPANY's TOOL2, which will be an add-on to XYZ's core service offering, be considered electronic information services and therefore exempt from Illinois retailers' occupation tax, will it be considered a non-taxable license of software and therefore not subject to Illinois retailers' occupation tax, or will it be considered canned software and therefore subject to Illinois retailers' occupation tax?

4. Will COMPANY's TOOL3, which will be an add-on to XYZ's core service offering, be considered electronic information services and therefore exempt from Illinois retailers' occupation tax, will it be considered a non-taxable license of software and therefore not subject to Illinois retailers' occupation tax, or will it be considered canned software and therefore subject to Illinois retailers' occupation tax?
5. Will COMPANY's PACKAGE4, which will be an add-on to XYZ's core service offering when purchased with the PACKAGE3, be considered electronic information services and therefore exempt from Illinois retailers' occupation tax, will it be considered a non-taxable license of software and therefore not subject to Illinois retailers' occupation tax, or will it be considered canned software and therefore subject to Illinois retailers' occupation tax?
6. Will COMPANY's APPLICATION1, which will be an add-on to XYZ's core service offering, be considered electronic information services and therefore exempt from Illinois retailers' occupation tax, will it be considered a non-taxable license of software and therefore not subject to Illinois retailers' occupation tax, or will it be considered canned software and therefore subject to Illinois retailers' occupation tax?
7. Will COMPANY's Web Services, which will be an add-on to XYZ's core service offering, be considered electronic information services and therefore exempt from Illinois retailers' occupation tax, will it be considered a non-taxable license of software and therefore not subject to Illinois retailers' occupation tax, or will it be considered canned software and therefore subject to Illinois retailers' occupation tax?

## **COMPANY's Interpretation of the Law**

### **Question 1**

COMPANY believes the XYZ core service offering and upgraded data packages will be considered electronic information services and therefore not subject to Illinois retailers' occupation tax.<sup>4</sup> The XYZ core service offering and upgraded data packages will provide business and financial information through a database accessed through the internet. The XYZ core service offering and upgraded data packages will not fall within the Illinois Administrative Code's definition of canned software.<sup>5</sup> COMPANY does not believe that software or other tangible personal property will be transferred to COMPANY's customers as part of the XYZ core service offering or upgraded data packages. Due to the fact that Illinois does not impose retailers' occupation tax on electronic business and financial information accessed through a database on the internet and the XYZ core service offering and upgraded data packages will not fall within the definition of canned software, COMPANY believes these offerings will not be subject to Illinois retailers' occupation tax.<sup>6</sup>

### **Question 2**

COMPANY believes the TOOL1, which will be an add-on to XYZ's core service offering, will be considered an electronic information service and therefore not subject to Illinois retailers' occupation tax.<sup>7</sup> The TOOL1 will not fall within the Illinois Administrative Code's definition of canned software.<sup>8</sup> The TOOL1 will be a web-based add-on within

XYZ that will enable a customer to present rules and approval limits to automate credit decisions. The TOOL1 will remain on COMPANY's server and will not be transferred to customers' computers. Based on the above, COMPANY believes the TOOL1 will be considered an electronic information service and therefore not subject to Illinois retailers' occupation tax.<sup>9</sup>

### Question 3

COMPANY believes the TOOL2, which will be an add-on to XYZ's core service offering, will be considered an electronic information service and therefore not subject to Illinois retailers' occupation tax.<sup>10</sup> The TOOL2 will not fall within the Illinois Administrative Code's definition of canned software.<sup>11</sup> The TOOL2 will be a web-based add-on within XYZ that will manage the risk of a customer's accounts receivable data, and the latest and most complete COMPANY business information. Customers will load in a set of accounts and rules to trigger labeling for existing accounts. The TOOL2 will remain on COMPANY's server and will not be transferred to customers' computers. Based on the above, COMPANY believes the TOOL2 will be considered an electronic information service and therefore not subject to Illinois retailers' occupation tax.<sup>12</sup>

### Question 4

COMPANY believes the TOOL3, which will be an add-on to XYZ's core service offering, will be considered an electronic information service and therefore not subject to Illinois retailers' occupation tax.<sup>13</sup> The TOOL3 will not fall within the Illinois Administrative Code's definition of canned software.<sup>14</sup> The TOOL3 will be a web-based add-on within XYZ that will enable a customer to load in invoice level trade details. The TOOL3 will then provide workflow information related to collection activities. The TOOL3 will not be transferred to customers' computers. Based on the above, COMPANY believes the TOOL3 will be considered an electronic information service and therefore not subject to Illinois retailers' occupation tax.<sup>15</sup>

### Question 5

COMPANY believes PACKAGE4, which will be additional data within XYZ when purchased with the PACKAGE3, will be considered an electronic information service and therefore not subject to Illinois retailers' occupation tax.<sup>16</sup> PACKAGE4 will not fall within the Illinois Administrative Code's definition of canned software.<sup>17</sup> PACKAGE4 will combine the financial performance data with COMPANY's trade data to create decision-ready insight. PACKAGE4 will remain on COMPANY's server and will not be transferred to customers' computers. Based on the above, COMPANY believes that PACKAGE4 will be considered an electronic information service and therefore not subject to Illinois retailers' occupation tax.<sup>18</sup>

### Question 6

COMPANY believes the APPLICATION1, which will be an add-on to XYZ's core service offering, will be considered an electronic information service and therefore not subject to Illinois retailers' occupation tax.<sup>19</sup> The APPLICATION1 will not fall within the Illinois Administrative Code's definition of canned software.<sup>20</sup> The APPLICATION1 will be a web-based add-on within XYZ that will enable customers to create customizable credit applications to meet their business needs. The data entered into the application will then be fed into XYZ for the customer to act on. The TOOL3 will remain on

COMPANY's server and will not be transferred to customers' computers. Based on the above, COMPANY believes the APPLICATION1 will be considered an electronic information service and therefore not subject to Illinois retailers' occupation tax.<sup>21</sup>

#### Question 7

COMPANY believes Web Services, which will be an add-on to XYZ's core service offering, will be considered an electronic information service and therefore not subject to Illinois retailers' occupation tax.<sup>22</sup> Web Services will not fall within the Illinois Administrative Code's definition of canned software.<sup>23</sup> Web Services will be a web-based tool within XYZ that will allow for data, decisions, or other account information to be passed back and forth between COMPANY and customer systems. Web Services will allow for the integration of the TOOL1 and TOOL3 Web Services will remain on COMPANY's server and will not be transferred to customers' computers. Based on the above, COMPANY believes Web Services will be considered an electronic information service and therefore not subject to Illinois retailers' occupation tax.<sup>24</sup>

Thank you in advance for your cooperation and consideration of this request. Should you or your staff have any questions or concerns, please do not hesitate to contact myself.

#### **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). The Department declines to issue a Private Letter Ruling because the nature of the services provided by the Company is not entirely clear. Although we are not providing you with a Private Letter Ruling, we hope the following general information will be of assistance.

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. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information, see 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax. Services that involve the transfer of tangible personal property (such as, for example, written reports, other tangible media and training manuals) incident to a sale of service may be subject to either Service Occupation Tax liability or Use Tax liability.

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 are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See Section 130.1935(c)(3).

If transactions for the licensing of computer software meet all of the criteria provided in Section 130.1935(a)(1), neither the transfer of the software or the subsequent software updates will be subject to Retailers' Occupation Tax.

If a company provides access to a database of information and does not transfer any software or other tangible personal property to its customers, the company would not incur Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax liability. Please note that the issue is under constant review in Illinois and other states and the taxability of information or data that is electronically transferred or downloaded may change.

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,

Richard S. Wolters  
Associate Counsel

RSW:mzk

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<sup>1</sup> 86 Ill. Adm. Code 130.2105.

<sup>2</sup> Illinois Private Letter Ruling ST 04-0013-PLR, (10/27/2004).

<sup>3</sup> 86 Ill. Adm. Code 130.1935.

<sup>4</sup> 86 Ill. Adm. Code 130.2105 and Illinois Private Letter Ruling ST 04-0013-PLR, (10/27/2004)

<sup>5</sup> 86 Ill. Adm. Code 130.1935

<sup>6</sup> 86 Ill. Adm. Code 130.2105 and Illinois Private Letter Ruling ST 04-0013-PLR, (10/27/2004)

<sup>7</sup> Id.

<sup>8</sup> 86 Ill. Adm. Code 130.1935

<sup>9</sup> 86 Ill. Adm. Code 130.2105 and Illinois Private Letter Ruling ST 04-0013-PLR, (10/27/2004)

<sup>10</sup> Id.

<sup>11</sup> 86 Ill. Adm. Code 130.1935

<sup>12</sup> 86 Ill. Adm. Code 130.2105 and Illinois Private Letter Ruling ST 04-0013-PLR, (10/27/2004)

<sup>13</sup> Id.

<sup>14</sup> 86 Ill. Adm. Code 130.1935

<sup>15</sup> 86 Ill. Adm. Code 130.2105 and Illinois Private Letter Ruling ST 04-0013-PLR, (10/27/2004)

<sup>16</sup> Id.

<sup>17</sup> 86 Ill. Adm. Code 130.1935.

<sup>18</sup> 86 Ill. Adm. Code 130.2105 and Illinois Private Letter Ruling ST 04-0013-PLR, (10/27/2004)

<sup>19</sup> Id.

<sup>20</sup> 86 Ill. Adm. Code 130.1935.

<sup>21</sup> 86 Ill. Adm. Code 130.2105 and Illinois Private Letter Ruling ST 04-0013-PLR, (10/27/2004)

<sup>22</sup> Id.

<sup>23</sup> 86 Ill. Adm. Code 130.1935.

<sup>24</sup> 86 Ill. Adm. Code 130.2105 and Illinois Private Letter Ruling ST 04-0013-PLR, (10/27/2004)