

ST 15-0027-GIL 04/30/2015 SERVICE OCCUPATION TAX

Membership fees are generally considered intangibles and are not subject to Retailers' Occupation Tax or Use Tax. If a membership charge entitles the customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to the service, the charge may result in Retailers' Occupation Tax liability, Service Occupation Tax liability, or Use Tax liability. See 86 Ill. Adm. Code 130.401(d) and 86 Ill. Adm. Code 140.101. (This is a GIL.)

April 30, 2015

Dear XXXX:

This letter is in response to your letter dated November 24 , 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:

COMPANY (the "Company"), an affiliate of COMPANY 2, respectfully submits this request, pursuant to 86 Ill. Admin. Code 1200.110, for a Ruling from the Illinois Department of Revenue ("Department") regarding the applicability of Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax, and Service Use Tax to sales of the Membership, described in more detail below.

As required by 2 Ill. Adm. Code § 1200.110, Company provides the following disclosures: (1) Company is not under audit by the Department; (2) Company is not engaged in litigation with the Department; (3) to the best of the Company's knowledge, the Department has not previously ruled on the same or a similar issue for the Company or a predecessor; (4) Company has not previously submitted the same or a similar issue to the Department for a letter ruling and withdrawn the request before a letter ruling was issued; (5) this request for a Ruling describes all authorities relevant to the request. This Ruling is intended to address current and future tax periods to which the facts described below apply. Company requests the opportunity to delete any identifying information prior to public dissemination of the Ruling.

**I. Facts**

Company offers a membership program known as MEMBERSHIP.<sup>1</sup> The general public may sign up for a free trial or paid MEMBERSHIP and receive certain membership benefits associated with the COMPANY 2 (the “Website”) during the membership period. The free trial period is one month and the paid membership period is one year. Participants in the membership program are referred to as “MEMBERS.” MEMBERS agree to the Terms & Conditions which are enclosed as Exhibit A. The membership benefits provided to MEMBERS are described below.

- SHIPPING – MEMBERS are entitled to receive free two-day shipping and other discounted shipping benefits on select shipping options on eligible purchases made on the Website.<sup>2</sup> Products eligible for these shipping benefits are designated as such on the Website’s product pages. Also, certain products sold by third-party merchants participating in SERVICE PROGRAM are eligible for SHIPPING benefits.<sup>3</sup>
- VIDEOS – MEMBERS may view movies and television shows designated as “VIDEOS” an unlimited number of times at no additional cost during the course of their MEMBERSHIP. The VIDEOS are viewed on the MEMBER’S television, computer, GAMING system, DEVICE, or other compatible device.<sup>4</sup> MEMBERS can stream the VIDEOS and MEMBERS with tablets may download VIDEOS.<sup>5</sup> The downloaded videos may be viewed without a wireless connection.
- LIBRARY – The LIBRARY allows eligible MEMBERS who own DEVICES to choose from thousands of electronic books (“e-books”) to borrow for free, as frequently as a book a month, with no due dates. MEMBERS can only borrow one e-book at a time. MEMBERS must own a DEVICE that is registered to the same ACCOUNT as the eligible MEMBERSHIP account in order to access this benefit.<sup>6</sup>
- FEATURE – The FEATURE allows eligible MEMBERS who own DEVICES to select and receive one free e-book per month from four books selected by PUBLISHING editors. The selected e-book becomes a permanent part of the eligible MEMBER’S LIBRARY. MEMBERS must own a DEVICE that is registered to the same ACCOUNT as the MEMBERSHIP account in order to access this benefit.<sup>7</sup>
- PANTRY – The PANTRY benefit allows MEMBERS, in addition to the discounted shipping benefits described in the Request, to have up to 45 pounds of heavy/bulky

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1 Additional business descriptions can be found at <http://www.XXXX/gp/>.

2 Shipping benefits also apply to certain products sold on third-party websites that offer shipping benefits.

3 Additional information on the PROGRAM can be found at <http://www.XXXX.com/content/XXXX.htm>.

4 Additional information on the VIDEO can be found at [http://www.XXXX/gp/help/customer/display.html/ref=hp\\_left\\_cn?ie=UTF8&nodeId=200572880](http://www.XXXX/gp/help/customer/display.html/ref=hp_left_cn?ie=UTF8&nodeId=200572880).

5 Additional information on the VIDEO for tablets can be found at [http://www.XXXX/dp/B00DOPNO4M/ref=sa\\_menu\\_kdpth#entertain](http://www.XXXX/dp/B00DOPNO4M/ref=sa_menu_kdpth#entertain).

6 Additional information on the LIBRARY program may be found at [http://www.XXXX/gp/help/customer/display.html/ref=hp\\_land\\_XXXX](http://www.XXXX/gp/help/customer/display.html/ref=hp_land_XXXX) nodeId=200757120.

7 Additional information on the FEATURE may be found at <http://www.XXXX/gp/digital/XXXX/botm/>

items delivered for a flat shipping fee of \$5.99. The heavy/bulky items in PANTRY are only available for purchase by MEMBERS.

- PRICING – PRICING provides discounts to MEMBERS on sales of certain tangible personal property. For example, MEMBERS can purchase certain televisions and software at a discount. The products offered to MEMBERS at a discount continue to expand.
- MUSIC – MEMBERS may listen to music designated as “MUSIC” an unlimited number of times at no additional cost during the course of their MEMBERSHIP. MUSIC may be played on the MEMBER’S computer, DEVICE, or other compatible device.<sup>8</sup> MUSIC may be streamed, or may be downloaded for listening without a wireless connection.
- Photo Storage – MEMBERS have unlimited storage for photos in the DRIVE (“DRIVE”). MEMBERS must have a DRIVE account registered to the same ACCOUNT as their MEMBERSHIP. As long as the MEMBERSHIP is active, photos uploaded to the MEMBER’S DRIVE will not count against the MEMBER’S fixed storage capacity in the DRIVE.

While Company does not directly provide the membership benefits to MEMBERS, it is contractually obligated to ensure the benefits are provided. To meet its contractual obligations, Company pays its affiliates to provide the underlying service related to each benefit. For example, an affiliate of Company provides the shipping service and another affiliate provides e-books.

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8 Additional information on the MUSIC program can be found at [http://www.XXXX/gp/feature.html/ref=dmm\\_prm\\_st\\_bb\\_learn?ie=UTF8&docId=1002557791&pf\\_rd\\_m=ATVPDKI KX0DER&pf\\_rd\\_s=merchandised-search-left-2&pf\\_rd\\_r=0DBBX2MRSYBVDQFW134R&pf\\_rd\\_t=101&pf\\_rd\\_p=1827366182&pf\\_rd\\_i=8335758011](http://www.XXXX/gp/feature.html/ref=dmm_prm_st_bb_learn?ie=UTF8&docId=1002557791&pf_rd_m=ATVPDKI KX0DER&pf_rd_s=merchandised-search-left-2&pf_rd_r=0DBBX2MRSYBVDQFW134R&pf_rd_t=101&pf_rd_p=1827366182&pf_rd_i=8335758011).

## II. Issues

- A. Is Company's sale of the MEMBERSHIP to Illinois customers subject to the Retailers' Occupation Tax or Use Tax?
- B. Is Company's provision of the free, one-month trial period of the MEMBERSHIP to Illinois customers subject to the Retailers' Occupation Tax or Use Tax?
- C. Is Company's sale of the MEMBERSHIP to Illinois customers subject to the Service Occupation Tax or Service Use Tax?
- D. Is Company's provision of the free, one-month trial period of the MEMBERSHIP to Illinois customers subject to the Service Occupation Tax or Service Use Tax?

## III. Law

Illinois imposes the Retailers' Occupation Tax on retail sales of tangible personal property<sup>9</sup> and it imposes the Use Tax on the use of tangible personal property purchased at retail from a retailer.<sup>10</sup> In addition, Illinois imposes the Service Occupation Tax on the transfer of tangible personal property incident to the sale of services,<sup>11</sup> and it also imposes the Service Use Tax on the use of real or tangible personal property acquired incidentally to the purchase of a service from a serviceman.<sup>12</sup> The following summary of Illinois law sets forth the relevant parts of these taxes.

### A. Retailers' Occupation Tax & Use Tax

#### 1. Retailers' Occupation Tax

Illinois imposes the Retailers' Occupation Tax "upon persons engaged in the business of selling at retail tangible personal property..."<sup>13</sup> A "sale at retail" means any "transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale . . . for a valuable consideration."<sup>14</sup> Illinois does not define what constitutes "tangible personal property" for Retailers' Occupation Tax purposes.

Illinois imposes its Retailers' Occupation Tax on gross receipts from sales of tangible personal property made in the taxpayer's course of business.<sup>15</sup> The application

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<sup>9</sup> 35 ILCS 120/2.

<sup>10</sup> 35 ILCS § 105/3.

<sup>11</sup> 35 ILCS § 115/3.

<sup>12</sup> 35 ILCS § 110/3.

<sup>13</sup> 35 ILCS § 120/2.

<sup>14</sup> 35 ILCS 120/1.

<sup>15</sup> 35 ILCS § 120/2-10.

of Retailers' Occupation Tax to receipts from sales of tangible personal property, transportation and delivery charges, and digital products is set forth below.

### **a. Tangible Personal Property**

As noted above, Illinois law does not define "tangible personal property" for Retailers' Occupation Tax purposes. Illinois law does provide, however, that "tangible personal property" includes canned computer software.<sup>16</sup> Custom computer programs, or software programs prepared to the special order of the customer, are not tangible personal property.<sup>17</sup> Information or data that is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, is also not characterized as tangible personal property, but rather is classified as an intangible.<sup>18</sup>

### **b. Transportation and Delivery Charges**

Illinois imposes the Retailers' Occupation Tax on transportation or delivery charges that are included in the selling price of the tangible personal property being sold.<sup>19</sup> The Department has provided specifically that shipping and handling charges for online sales are taxed under the Retailers' Occupation Tax Act, not the Service Occupation Tax Act.<sup>20</sup>

The Retailers' Occupation Tax applies to transportation and delivery charges when they are included in the taxable gross receipts or sales price of a transaction. An Illinois regulation provides that when computing the Retailers' Occupation Tax liability, a taxpayer may not deduct from its taxable gross receipts or selling prices "the cost of property sold, the cost of materials used, labor or service costs, idle time charges, incoming freight or transportation costs, overhead costs, processing charges, clerk hire or salesmen's commissions, interest paid by the seller, or any other expenses whatsoever."<sup>21</sup> Illinois further defines "transportation and delivery charges" as "freight, express, mail, truck or other carrier, conveyance or delivery expenses."<sup>22</sup> Transportation and delivery charges are synonymous with shipping and handling charges.<sup>23</sup>

The taxability of transportation and delivery charges does not depend on whether such charges are separately stated.<sup>24</sup> Instead, taxability depends on whether "the transportation or delivery charges are included in the selling price of the property which

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<sup>16</sup> 35 ILCS § 120/2; Illinois Dept. of Rev. General Information Letter ST 13-0051-GIL, 09/13/2013 ("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.").

<sup>17</sup> 86 Ill. Admin. Code 130.1935(c)(1) ("[c]ustom computer programs prepared to the special order of the customer are not subject to tax under the Retailers' Occupation Tax, Use Tax, Service Occupation Tax or Service Use Tax.").

<sup>18</sup> See 86 Ill. Admin. Code 130.2105(a)(3).

<sup>19</sup> 86 Ill. Admin. Code 130.415(c).

<sup>20</sup> *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 365 (Ill. 2009); see also Dep't of Rev. v. ABC Corp., Inc., No. ST 11-03, (03/02/2011) (ruling that delivery charges made in connection with a food and meal delivery service was subject to tax under the Retailers' Occupation Tax Act, not the Service Occupation Tax Act).

<sup>21</sup> 86 Ill. Admin. Code 130.410.

<sup>22</sup> 86 Ill. Admin. Code 130.415(a).

<sup>23</sup> *Id.*

<sup>24</sup> 86 Ill. Admin. Code 130.415(b).

is sold” or whether “the seller and the buyer contract separately for such transportation or delivery charges by not including such charges in such selling price.”<sup>25</sup> If “the transportation or delivery charges are included in the selling price of the tangible personal property which is sold,” the transportation or delivery expense may not be deducted and is subject to the Retailers’ Occupation Tax.<sup>26</sup>

If the seller and buyer contract for the transportation or delivery charges separately from the selling price of the transaction, then the transportation or delivery service is not a part of the “selling price” but rather a separate service charge that is not subject to the Retailers’ Occupation Tax.<sup>27</sup> Delivery charges are contracted for separately when the “seller requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery.”<sup>28</sup> If, however, such charges exceed the costs of shipping, transportation or delivery, then the charges are subject to tax.<sup>29</sup> The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price is a separate and distinct contract for transportation or delivery.<sup>30</sup> However, documentation demonstrating that the purchaser had the option of taking delivery of the property, at the seller’s location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, is also sufficient.<sup>31</sup>

### **c. Services**

Illinois does not impose the Retailers’ Occupation Tax on services.<sup>32</sup> The Retailers’ Occupation Tax is generally only imposed “upon persons engaged in the business of selling at retail tangible personal property...”<sup>33</sup>

#### **i. Membership Fees**

As a general matter, Illinois does not impose the Retailers’ Occupation Tax on the sale of memberships. An Illinois regulatory provision states that “[m]embership fees are not gross receipts from the sale of tangible personal property.”<sup>34</sup> Membership fees are gross receipts received in exchange for an intangible.<sup>35</sup> For example, when a membership “buys” purchasers the right to purchase products at wholesale, but are not applied to the purchase price of tangible personal property, they are not subject to the Retailers’ Occupation Tax.<sup>36</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> 86 Ill. Admin. Code 130.415(c).

<sup>27</sup> 86 Ill. Admin. Code 130.415(d).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 35 ILCS 120/2.

<sup>33</sup> 35 ILCS § 120/2 (effective Jan. 1, 2014).

<sup>34</sup> 86 Ill. Admin. Code 130.401(d).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

Illinois does impose the Retailers' Occupation Tax on membership fees, however, if the membership represents the sale of tangible personal property.<sup>37</sup> An Illinois regulation provides an example of a country club that charges a member \$100 each month as a "minimum charge" for food services at the club.<sup>38</sup> If the member consumes \$75 worth of food in a particular month, then the \$75 is subject to the Retailers' Occupation Tax.<sup>39</sup> Further, if a membership charge entitles a customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to that service, then that charge can result in Retailers' Occupation Tax liability, Service Occupation Tax liability or Use Tax liability.<sup>40</sup> The taxability determination depends on the nature of the serviceman's activities.<sup>41</sup>

#### d. Digital Goods

Illinois does not impose the Retailers' Occupation Tax on digital goods because they are not tangible personal property. Under Illinois law "[i]nformation or data that is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, does not constitute the transfer of tangible personal property."<sup>42</sup> The Department has also taken the position that the electronic downloading of a book is not subject to the Retailers' Occupation Tax because it involves only the transfer of data or information, not the electronic transfer of canned computer software.<sup>43</sup>

#### e. Bundled Transactions

Illinois law addresses bundled transactions in the context of a nontaxable service bundled with tangible personal property. The Department has applied the "true object" test in the context of examining bundled exempt services with tangible personal property or taxable telecommunications services.<sup>44</sup> The Department has indicated that the true object test is an all-or-nothing test, and it looks at the reason or purpose the

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Illinois Dept. of Rev. General Info. Ltr. ST 09-0034-GIL, (03/17/2009); *see also* Illinois Dept. of Rev. General Info. Ltr. ST 02-0230-GIL, (10/24/2002) (ruling that a \$500 penalty fee imposed for not purchasing the requisite amount of food and beverage of a minimum spending program was not subject to the Retailers' Occupation Tax, as "[a]ny penalty that is imposed that is not part of the selling price of tangible personal property would not be subject to sales tax.").

<sup>41</sup> Illinois Dept. of Rev. General Info. Ltr. ST 09-0034-GIL, (03/17/2009).

<sup>42</sup> 86 Ill. Admin. Code 130.2105(a)(3); Illinois Dept. of Rev. General Information Letter ST 11-0015-GIL, (03/29/2011); Illinois Dept. of Rev. General Information Letter ST 09-0098-GIL, (07/30/2009).

<sup>43</sup> Illinois Dept. of Rev. General Information Letter ST 07-0068-GIL, (06/19/2007); Illinois Dept. of Rev. General Information Letter ST 14-0028-GIL, (04/04/2014); Illinois Dept. of Rev. General Information Letter ST 14-0031-GIL (05/12/2014).

<sup>44</sup> Illinois Dept. of Rev. General Information Letter ST 13-0048-GIL (09/11/2013) (applying the true object test to determine whether a bundled service with an optional communications feature was subject to telecommunications excise tax, stating that "[i]t is clear customers subscribe to the SERVICES because of the interactive Internet platforms provided to host various meetings and presentations, the true object of the services. Any use of the optional Communication Features, which is restricted to SERVICES sessions, is secondary to the true object of the value added SERVICES."); Illinois Dept. of Rev. General Information Letter ST 10-0069-GIL, (08/10/2010) (applying the true object test to determine whether a bundled service with an optional communications feature is subject to tax, stating that "[i]t is clear customers subscribe to the SERVICES because of the interactive Internet platforms provided to host various meetings and presentations, the true object of the services. Any use of the optional Communication Features, which is restricted to SERVICES sessions, is secondary to the true object of the value added SERVICES."); Illinois Dept. of Rev. General Information Letter ST 09-0047-GIL, (03/24/2009) (applying the true object test to determine whether a bundled service is subject to tax, stating that "Company A is not providing a telecommunications service as they are charging a subscription fee and the true object of the transaction is the call tracking service and the electronic download, which are specifically not subject to the Illinois ROT or SOT.").

buyer entered into the transaction and what the buyer wanted to purchase.<sup>45</sup> If the purpose is to obtain a taxable item, e.g., tangible personal property, the entire transaction is taxable unless the taxable and nontaxable items are separately stated.<sup>46</sup>

## 2. Use Tax

Illinois imposes its complementary Use Tax on the privilege of “using” in Illinois “tangible personal property purchased at retail from a retailer, including computer software...”<sup>47</sup> “Use” means “the exercise by any person of any right or power over tangible personal property incident to the ownership of that property...”<sup>48</sup> Illinois imposes its use tax upon either the selling price or the fair market value, if any, of the tangible personal property.<sup>49</sup> The Retailers’ Occupation Tax and Use Tax are complementary so that if a transaction is not subject to Retailers’ Occupation Tax, it is subject to the Use Tax.<sup>50</sup> The Use Tax rate equals the tax due under the Retailers’ Occupation Tax.<sup>51</sup>

### B. Service Occupation Tax & Service Use Tax

#### 1. Service Occupation Tax

Illinois imposes the Service Occupation Tax on “all persons engaged in the business of making sales of a service (referred to as “servicemen”)<sup>52</sup> on all tangible personal property transferred as an incident of a sale of service, including computer software...”<sup>53</sup> A “sale of service” means any transaction other than (a) a retail sale of tangible personal property subject to the Retailers’ Occupation Tax or Use Tax; and (b) an exempt sale for resale.<sup>54</sup> For purposes of this definition, Illinois adopts the Retailers’ Occupation Tax definition for a “retail sale.”<sup>55</sup> The tax is computed as a percentage of the cost price to the serviceman of the tangible personal property.<sup>56</sup> Charges for services apart from the cost price of tangible personal property are not subject to this tax.<sup>57</sup>

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<sup>45</sup> See Illinois Dept. of Rev. General Information Letter ST 07-0066-GIL (06/18/2007) (citing to Illinois Dept. of Rev. General Information Letter ST 04-0091-GIL (06/21/2004)).

<sup>46</sup> See Illinois Dept. of Rev. General Information Letter ST 07-0066-GIL (06/18/2007) (citing to Illinois Dept. of Rev. General Information Letter ST 04-0091-GIL (06/21/2004)).

<sup>47</sup> 35 ILCS § 105/3.

<sup>48</sup> 35 ILCS § 105/2.

<sup>49</sup> 35 ILCS § 105/3-10.

<sup>50</sup> See *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 365 (Ill. 2009) (“ROTA and the Use Tax Act are complementary, interlocking statutes that comprise the taxation scheme commonly referred to as the Illinois “sales tax.” (internal citations omitted)); Illinois Dept. of Rev. General Information Letter ST 13-0028-GIL, (05/28/2013) (“The Retailers’ Occupation Tax is imposed on the retailer and the Use Tax is imposed on the purchaser. Since the Use Tax is imposed on the purchaser, there is a tax to which an exempt purchaser’s exempt status can attach and, because these taxes are complementary, if the purchaser is exempt from paying Use Tax, then the retailer is generally exempt from the Retailers’ Occupation Tax.”).

<sup>51</sup> 35 ILCS § 105/3-10; 35 ILCS § 120/2-10.

<sup>52</sup> See also 35 ILCS § 115/2 (defining “Serviceman” as “any person who is engaged in the occupation of making sales of service.”).

<sup>53</sup> 35 ILCS § 115/3.

<sup>54</sup> 35 ILCS § 115/2(a)-(b).

<sup>55</sup> 35 ILCS § 115/2.

<sup>56</sup> 35 ILCS 115/3-10.

<sup>57</sup> *Id.*



The Service Occupation Tax applies to the “selling price” of the tangible personal property.<sup>58</sup> For the purpose of computing this tax, the “selling price” cannot be less than the cost price to the serviceman of the tangible personal property transferred.<sup>59</sup> The selling price of each item of tangible personal property transferred as an incident of a sale of service may either be separately stated or included in the entire charge presented on the serviceman's bill to its customer.<sup>60</sup> If the selling price of the tangible personal property transferred as incident of a sale of service is not separately stated, the “selling price” of the tangible personal property is deemed to be 50% of the serviceman's entire billing to the service customer.<sup>61</sup>

The application of Service Occupation Tax to receipts from sales of tangible personal property, transportation services, and digital products is set forth below.

#### **a. Tangible Personal Property**

Illinois law does not define “tangible personal property” for Service Occupation Tax purposes. Illinois law does provide, however, that “tangible personal property” includes prewritten or canned computer software.<sup>62</sup>

#### **b. Transportation and Delivery Charges (i.e., Shipping and Handling Charges)**

Illinois Service Occupation Tax does not apply to transportation and delivery charges if such charges are made in connection with a retail sale.<sup>63</sup> The Service Occupation Tax does not apply, *inter alia*, to a retail sale of tangible personal property that is subject to the Retailers’ Occupation Tax or Use Tax.<sup>64</sup> The Retailers’ Occupation Tax applies to all retail sales unless the taxpayer can produce evidence in the form of books and records to show that the sale is not subject to the Retailers’ Occupation Tax.<sup>65</sup>

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> See 35 ILCS § 115/3-25 (for Service Occupation Tax purposes, “computer software” means a set of statements, data, or instructions to be used directly or indirectly in a computer in order to bring about a certain result in any form in which those statements, data, or instructions may be embodied, transmitted, or fixed, by any method now known or hereafter developed, regardless of whether the statements, data, or instructions are capable of being perceived by or communicated to humans, and includes prewritten or canned software that is held for repeated sale or lease, and all associated documentation and materials, if any, whether contained on magnetic tapes, discs, cards, or other devices or media, but does not include software that is adapted to specific individualized requirements of a purchaser, custom-made and modified software designed for a particular or limited use by a purchaser, or software used to operate exempt machinery and equipment used in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease.”).

<sup>63</sup> 35 ILCS § 115/2(a)-(b).

<sup>64</sup> *Id.*

<sup>65</sup> *H.D., Ltd. v. Dep’t of Rev.*, 297 Ill. App. 3rd 26, 34 (2d Dist. 1998).

Case law also provides that transportation and delivery charges for an online retail sale, if applicable, are taxed under the Retailers' Occupation Tax Act, not the Service Occupation Tax Act.<sup>66</sup>

### **c. Services**

Illinois does not impose the Service Occupation Tax on pure services. Instead, Illinois imposes the Service Occupation Tax on all tangible personal property transferred as an incident of a sale of service.<sup>67</sup> A "sale of service" means any transaction other than (a) a retail sale of tangible personal property subject to the Retailers' Occupation Tax or Use Tax; and (b) an exempt sale for resale.<sup>68</sup> For purposes of this definition, Illinois adopts the Retailers' Occupation Tax definition for a "retail sale."<sup>69</sup> If a "sale of service" does not involve the transfer of tangible personal property, Service Occupation Tax does not apply.

### **i. Membership Fees**

Illinois does not impose the Service Occupation Tax on membership fees. As a general matter, Illinois does not impose the Service Occupation Tax on membership fees because they are considered to be intangibles, not tangible personal property. The Department has indicated that receipts from the sale of membership fees are not subject to the Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax because a membership fee is considered an intangible, not tangible personal property.<sup>70</sup>

If, however, a membership charge entitles a customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to that service, then that charge may result in Retailers' Occupation Tax liability, Service Occupation Tax liability or Use Tax Liability.<sup>71</sup> In this case where the membership may be taxable, the tangible personal property must be provided to the member by virtue of his or her purchase of the membership; there is no subsequent

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<sup>66</sup> *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 365 (Ill. 2009); *see also* Dep't of Rev. v. ABC Corp., Inc., No. ST 11-03, (03/02/2011) (ruling that delivery charges made in connection with a food and meal delivery service was subject to tax under the Retailers' Occupation Tax Act, not the Service Occupation Tax Act).

<sup>67</sup> 35 ILCS § 115/3 [Eff. 1-1-2014.].

<sup>68</sup> 35 ILCS § 115/2(a)-(b).

<sup>69</sup> 35 ILCS § 115/2.

<sup>70</sup> Illinois Dept. of Rev. General Information Letter ST 09-0034-GIL, (03/17/2009) ("The Department does not consider receipts from the sale of membership fees to be gross receipts from the sale of tangible personal property. Rather, a membership fee is considered an intangible, which is not subject to the Retailers' Occupation Tax or Use Tax liability. 86 Ill. Adm. Code 130.401(d). This is the case when the sale of membership rights does not include the transfer of tangible personal property. However, if the membership charge entitles the customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to that service, then that charge may result in either the Retailers' Occupation Tax liability, Service Occupation Tax liability or Use Tax liability, depending upon the serviceman's activities. See 86 Ill. Adm. Code 140.101.").

<sup>71</sup> *See* 86 Ill. Adm. Code 140.101.

purchase or consideration required by the member to receive the tangible personal property.<sup>72</sup>

#### **d. Digital Goods**

As a general matter, Illinois does not impose the Service Occupation Tax on digital goods because they are considered to be intangibles, not tangible personal property.<sup>73</sup> The Department has taken the position that digital products transferred electronically are not subject to the Service Occupation Tax or the Service Use Tax.<sup>74</sup>

#### **e. Bundled Transactions**

Illinois Service Occupation Tax applies to “all persons engaged in the business of making sales of service (referred to as “servicemen”)<sup>75</sup> on all tangible personal property transferred as an incident of a sale of service, including computer software...”<sup>76</sup> The tax is computed as a percentage of the cost price to the serviceman of the tangible personal property.<sup>77</sup> Charges for services apart from the cost price of tangible personal property are not subject to this tax.<sup>78</sup>

For Service Occupation Tax purposes, Illinois law provides several valuation methods for the tangible personal property transferred incident to the sale of a service, which do not involve the application of the true object test. The Service Occupation Tax applies to the “selling price” of the tangible personal property.<sup>79</sup> For the purpose of computing this tax, the “selling price” cannot be less than the cost price to the serviceman of the tangible personal property transferred.<sup>80</sup> The selling price of each item of tangible personal property transferred as an incident of a sale of service may either be separately stated or included in the entire charge presented on the serviceman's bill to its customer.<sup>81</sup> If the selling price of the tangible personal property transferred as incident of a sale of service is not separately stated, the “selling price” of the tangible personal property is deemed to be 50% of the serviceman's entire billing to the service customer.<sup>82</sup> When, however, a serviceman contracts to design, develop, and produce special order machinery or equipment, the Service Occupation Tax is based on the serviceman's cost price of the tangible personal property transferred incident to the completion of the contract.<sup>83</sup>

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<sup>72</sup> *Id.*

<sup>73</sup> 86 Ill. Admin. Code 130.2105(a)(3); Illinois Dept. of Rev. General Information Letter ST 11-0015-GIL, (03/29/2011); Illinois Dept. of Rev. General Information Letter ST 09-0098-GIL, (07/30/2009).

<sup>74</sup> Illinois Dept. of Rev. General Information Letter No. ST 11-0015-GIL, (03/29/2011).

<sup>75</sup> *See also* 35 ILCS § 115/2 (defining “Serviceman” as “any person who is engaged in the occupation of making sales of service.”).

<sup>76</sup> 35 ILCS § 115/3.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

## 2. Use Tax

Illinois imposes its Service Use Tax on the use of “real or tangible personal property acquired as an incident to the purchase of a service from a serviceman, including computer software, and including photographs...”<sup>84</sup> “Use” means the “the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, but does not include the sale or use for demonstration by him of that property in any form as tangible personal property in the regular course of business.”<sup>85</sup> “Use” does not mean the interim use of tangible personal property nor the physical incorporation of tangible personal property, as an ingredient or constituent, into other tangible personal property, which is either sold in the regular course of business or transported in interstate commerce to destinations outside the State of Illinois.<sup>86</sup> Illinois regulatory provisions further provide that if a serviceman is not taxable under the Service Occupation Tax Act, then the use of such property is likewise not subject to the Service Use Tax.<sup>87</sup> Illinois imposes its Service Use Tax on “the selling price of tangible personal property transferred as an incident to the sale of service.”<sup>88</sup> The selling price cannot be less than the cost price of the property to the serviceman.<sup>89</sup>

## IV. Analysis

### A. Company’s Sale of the MEMBERSHIP to Illinois Customers is Not Subject to the Retailers’ Occupation Tax and Use Tax

The sale of the MEMBERSHIP to Illinois customers is not subject to Illinois Retailers’ Occupation Tax and Use Tax because the MEMBERSHIP is not any of the following: (1) taxable tangible personal property; (2) a taxable service under Illinois law, including a taxable membership; or (3) a bundled transaction because the membership does not involve the transfer of tangible personal property or a taxable service.

#### 1. The MEMBERSHIP is Not Taxable Tangible Personal Property

Sales of the MEMBERSHIP are not subject to Illinois Retailers’ Occupation Tax and Use Tax because the MEMBERSHIP is not tangible personal property. While tangible personal property is not defined under Illinois law for Illinois Retailers’ Occupation Tax and Use Tax purposes, the MEMBERSHIP does not provide customers with a tangible item. Instead, the MEMBERSHIP is properly characterized as an intangible right to receive certain benefits. Accordingly, the sale of a MEMBERSHIP is not subject to Illinois Retailers’ Occupation Tax and Use Tax as tangible personal property.

#### 2. The MEMBERSHIP is Not a Taxable Service

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<sup>84</sup> 35 ILCS § 110/3.

<sup>85</sup> 35 ILCS § 110/2.

<sup>86</sup> *Id.*

<sup>87</sup> 86 Ill. Admin. Code 160.101.

<sup>88</sup> 35 ILCS § 110/3-10.

<sup>89</sup> *Id.*

The MEMBERSHIP is not subject to Illinois Retailers' Occupation Tax and Use Tax because the MEMBERSHIP is not a taxable service under Illinois law.

#### **a. The MEMBERSHIP is Not a Taxable Membership**

The MEMBERSHIP is not subject to Illinois Retailers' Occupation Tax and Use Tax because it is not a taxable membership under Illinois law. As a general matter, Illinois does not impose Retailers' Occupation Tax on sales of memberships. An Illinois regulatory provision states that “[m]embership fees are not gross receipts from the sale of tangible personal property.”<sup>90</sup> Illinois law does provide that if the member receives tangible personal property as part of their purchase of the membership, the sale of the membership may be taxable.<sup>91</sup>

In this case, the MEMBERSHIP is not subject to Illinois Retailers' Occupation Tax and Use Tax because the purchase of a MEMBERSHIP does not result in the transfer of tangible personal property. MEMBERS do not receive any tangible personal property as part of their purchase of a MEMBERSHIP. Rather a MEMBERSHIP is merely an intangible right to receive certain benefits. Specifically, a MEMBERSHIP allows a MEMBER to gain access to: free or discounted shipping on select products; the VIDEO collection; the LIBRARY; the FEATURE; PANTRY; PRICING; MUSIC; and unlimited photo storage. MEMBERS do not receive any tangible personal property with their purchase of a MEMBERSHIP. Instead, a MEMBER must choose to purchase tangible personal property separate and apart from the MEMBERSHIP (on which purchases he or she may receive a discount or discounted shipping and handling). Accordingly, because the MEMBERSHIP does not result in the transfer of tangible personal property, the MEMBERSHIP is not a taxable membership subject to Illinois Retailers' Occupation Tax and Use Tax.

### **3. The MEMBERSHIP is Not a Taxable Bundled Transaction**

The MEMBERSHIP does not constitute a bundled transaction that would be subject to Illinois' Retailers' Occupation Tax and Use Tax. Although the term “bundled transaction” is not explicitly defined by Illinois law, Illinois has addressed bundled transactions in the context of exempt services with tangible personal property or taxable telecommunications services.<sup>92</sup> In this case, the benefits provided by the

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<sup>90</sup> 86 Ill. Admin. Code 130.401(d).

<sup>91</sup> *Id.*

<sup>92</sup> Illinois Dept. of Rev. General Information Letter ST 13-0048-GIL (09/11/2013) (applying the true object test to determine whether a bundled service with an optional communications feature was subject to telecommunications excise tax, stating that “[i]t is clear customers subscribe to the SERVICES because of the interactive Internet platforms provided to host various meetings and presentations, the true object of the services. Any use of the optional Communication Features, which is restricted to SERVICES sessions, is secondary to the true object of the value added SERVICES.”); Illinois Dept. of Rev. General Information Letter ST 10-0069-GIL, (08/10/2010) (applying the true object test to determine whether a bundled service with an optional communications feature is subject to tax, stating that “[i]t is clear customers subscribe to the SERVICES because of the interactive Internet platforms provided to host various meetings and presentations, the true object of the services. Any use of the optional Communication Features, which is restricted to SERVICES sessions, is secondary to the true object of the value added SERVICES.”); Illinois Dept. of Rev. General Information Letter ST 09-0047-GIL, (03/24/2009) (applying the true object test to determine whether a bundled service is subject to tax, stating that “Company A is not providing a telecommunications service as they are charging a subscription fee and the true object of the transaction is the call tracking service and the electronic

MEMBERSHIP do not involve the transfer of tangible personal property. Rather, a MEMBERSHIP allows a MEMBER to gain access to the benefits described above. Any tangible personal property must be purchased by MEMBERS separately; MEMBERS do not receive tangible personal property by virtue of purchasing a MEMBERSHIP. Accordingly, the MEMBERSHIP is not a bundled transaction upon which the Illinois Retailers' Occupation Tax and Use Tax would be imposed.

Based on the above analysis, the sale of the MEMBERSHIP to Illinois customers is not subject to the Illinois Retailers' Occupation Tax and Use Tax because the MEMBERSHIP is not any of the following: (1) taxable tangible personal property; (2) a taxable service, including a taxable membership; or (3) a bundled transaction because the MEMBERSHIP does not involve the transfer of tangible personal property.

### **B. Company's Provision of a One-Month Trial Period MEMBERSHIP to Illinois Customers is Not Subject to the Retailers' Occupation Tax and Use Tax**

The provision of a one-month trial period of the MEMBERSHIP to Illinois customers is not subject to the Retailers' Occupation Tax and Use Tax because: (1) there is no charge to customers for the MEMBERSHIP, and (2) the sale of the MEMBERSHIP is not subject to the Retailers' Occupation Tax and Use Tax. Both the Retailers' Occupation Tax and Use Tax are calculated based on a percentage of the sales price or the fair market value of the tangible personal property being sold.<sup>93</sup> The purchase price of the trial membership is \$0; it is provided free of charge. Furthermore, as set forth above, the MEMBERSHIP is not a taxable membership under Illinois Retailers' Occupation Tax and Use Tax law and guidance. As a result, the one-month trial period of the MEMBERSHIP provided to Illinois customers for no charge is not subject to the Retailers' Occupation Tax and Use Tax.

### **C. Company's Sale of the MEMBERSHIP to Illinois Customers is Not Subject to the Service Occupation Tax and the Service Use Tax**

Sales of MEMBERSHIPS to Illinois customers are not subject to Illinois Service Occupation Tax and Service Use Tax because the MEMBERSHIP is not any of the following: (1) taxable tangible personal property; (2) a taxable service under Illinois law, including a taxable membership; or (3) a bundled transaction because the MEMBERSHIP does not involve the transfer of tangible personal property.

#### **1. The MEMBERSHIP is Not Taxable Tangible Personal Property**

Sales of the MEMBERSHIP are not subject to Illinois Service Occupation Tax and Service Use Tax because the MEMBERSHIP is not tangible personal property. Illinois imposes the Service Occupation Tax on all tangible personal property transferred as an incident of a sale of service.<sup>94</sup> While tangible personal property is not defined under Illinois law for Illinois Service Occupation Tax and Service Use Tax purposes, the MEMBERSHIP does not provide customers with any tangible personal property. Instead, the MEMBERSHIP is properly characterized as an intangible right to receive

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download, which are specifically not subject to the Illinois ROT or SOT.”).

<sup>93</sup> 35 ILCS § 105/3-10; 35 ILCS § 120/2-10.

<sup>94</sup> 35 ILCS § 115/3 [Eff. 1-1-2014.].

certain benefits. Accordingly, the sale of a MEMBERSHIP is not subject to Illinois Service Occupation Tax and Service Use Tax as tangible personal property.

## **2. The MEMBERSHIP is Not a Taxable Service**

The MEMBERSHIP is not subject to Illinois Service Occupation Tax and Service Use Tax because the MEMBERSHIP is not a taxable service under Illinois law.

### **a. The MEMBERSHIP is Not a Taxable Membership**

The MEMBERSHIP is not subject to Illinois Service Occupation Tax and Service Use Tax because it is not a taxable membership under Illinois law. The Department has indicated that receipts from the sale of memberships are not subject to the Service Occupation Tax or the Service Use Tax because a membership is considered an intangible, not tangible personal property.<sup>95</sup> Illinois law does provide instances where memberships are subject to the Service Occupation Tax and the Service Use Tax if such fees are in essence a fee paid for the transfer of tangible personal property.<sup>96</sup> For the same reasons set forth in section IV. A. 2. a, the MEMBERSHIP is not subject to the Illinois Service Occupation Tax and Service Use Tax because a purchase of the MEMBERSHIP does not result in the transfer of tangible personal property.

## **3. The MEMBERSHIP is Not a Taxable Bundled Transaction**

The MEMBERSHIP does not constitute a bundled transaction that would be subject to Illinois Service Occupation Tax and Service Use Tax. Although the term “bundled transaction” is not explicitly defined by Illinois law, Illinois has addressed bundled transactions in the context of exempt services with tangible personal property and taxable telecommunications services.<sup>97</sup> Both types of bundled transactions require

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<sup>95</sup> Illinois Dept. of Rev. General Information Letter ST 09-0034-GIL, (03/17/2009) (“The Department does not consider receipts from the sale of membership fees to be gross receipts from the sale of tangible personal property. Rather, a membership fee is considered an intangible, which is not subject to the Retailers' Occupation Tax or Use Tax liability. 86 Ill. Adm. Code 130.401(d). This is the case when the sale of membership rights does not include the transfer of tangible personal property. However, if the membership charge entitles the customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to that service, then that charge may result in either Retailers' Occupation Tax liability, Service Occupation Tax liability or Use Tax liability, depending upon the serviceman's activities. See 86 Ill. Adm. Code 140.101.”).

<sup>96</sup> 86 Ill. Admin. Code 130.401(d).

<sup>97</sup> Illinois Dept. of Rev. General Information Letter ST 13-0048-GIL (09/11/2013) (applying the true object test to determine whether a bundled service with an optional communications feature was subject to telecommunications excise tax, stating that “[i]t is clear customers subscribe to the SERVICES because of the interactive Internet platforms provided to host various meetings and presentations, the true object of the services. Any use of the optional Communication Features, which is restricted to SERVICES sessions, is secondary to the true object of the value added SERVICES.”); Illinois Dept. of Rev. General Information Letter ST 10-0069-GIL, (08/10/2010) (applying the true object test to determine whether a bundled service with an optional communications feature is subject to tax, stating that “[i]t is clear customers subscribe to the SERVICES because of the interactive Internet platforms provided to host various meetings and presentations, the true object of the services. Any use of the optional Communication Features, which is restricted to SERVICES sessions, is secondary to the true object of the value added SERVICES.”); Illinois Dept. of Rev. General Information Letter ST 09-0047-GIL, (03/24/2009) (applying the true object test to determine whether a bundled service is subject to tax, stating that “Company A is not providing a telecommunications service as they are charging a subscription fee and the true object of the transaction is the call tracking service and the electronic

tangible personal property as a component of the transaction. For the same reasons set forth above in section IV. A. 3, MEMBERS do not receive any tangible personal property with their purchase of a MEMBERSHIP, and therefore, sales of the MEMBERSHIP cannot be bundled transactions subject to the Illinois Service Occupation Tax and Service Use Tax.

Based on the above analysis, the sale of the MEMBERSHIP to Illinois customers is not subject to Illinois Service Occupation Tax and Service Use Tax because the MEMBERSHIP is not any of the following: (1) taxable tangible personal property; (2) a taxable service, including a taxable membership; or (3) a bundled transaction because the MEMBERSHIP does not involve the transfer of tangible personal property.

**D. Company's Provision of a One-Month Trial Period MEMBERSHIP to Illinois Customers is Not Subject to Illinois Service Occupation Tax or Service Use Tax**

The provision of a one-month trial period of the MEMBERSHIP to Illinois customers is not subject to Illinois Service Occupation Tax or Service Use Tax because: (1) there is no charge to customers for the MEMBERSHIP, and (2) the sale of the MEMBERSHIP is not subject to Illinois Service Occupation Tax or Service Use Tax. The Service Occupation Tax and the Service Use Tax are imposed on nearly identical bases. The Service Occupation Tax is calculated based on a percentage of the cost price to the serviceman of the tangible personal property being sold.<sup>98</sup> The Service Use Tax is calculated based on a percentage of the selling price of tangible personal property transferred as an incident to the sale of service, which cannot be less than the cost price of the property to the serviceman.<sup>99</sup> The purchase price of the trial membership is \$0; it is provided free of charge. Furthermore, as set forth above, the MEMBERSHIP is not a taxable membership under Illinois Service Occupation Tax or Service Use Tax law and guidance. As a result, the one-month trial period of the MEMBERSHIP provided to Illinois customers for no charge is not subject to Illinois Service Occupation Tax or Service Use Tax.

**V. Conclusions**

Company respectfully requests the Department's confirmation of the following:

- A. Sales of the MEMBERSHIP to Illinois customers are not subject to the Retailers' Occupation Tax or Use Tax.
- B. The free, one-month trial period of a MEMBERSHIP provided to Illinois customers is not subject to the Retailers' Occupation Tax or Use Tax.
- C. Sales of the MEMBERSHIP to Illinois customers are not subject to the Service Occupation Tax or Service Use Tax.

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download, which are specifically not subject to the Illinois ROT or SOT.”).

<sup>98</sup> 35 ILCS 115/3-10.

<sup>99</sup> 35 ILCS § 110/3-10.



D. The free, one-month trial period of a MEMBERSHIP provided to Illinois customers is not subject to the Service Occupation Tax or Service Use Tax.

Prior to the issuance of the Ruling, Company respectfully requests that the Department contact us to discuss any facts or questions that may potentially result in a taxable Ruling. Company reserves the right to withdraw the request. Should any of the facts or the analysis noted in this request require clarification, please do not hesitate to contact me.

In a follow-up email dated April 13, 2015, you inquired about three new benefits that have been added, as described below:

- Exclusive Access to ELEMENTS – ELEMENTS is a line of premium everyday essential products such as baby wipes. ELEMENTS products are only available for purchase by MEMBERS.
- Access - MEMBERS receive 30 minutes early access to select Lightning Deals on the Website and sales events on WEBSITE.
- BUTTON – Currently, MEMBERS can request an invitation to receive up to 3 BUTTONS. BUTTONS allow customers to simply press the button when the customer needs to reorder a product. Upon pressing the button, an order is placed through the customer's ACCOUNT for the product. Each button works for a single product. For example, a customer could obtain a button for BRAND laundry detergent and, upon running out of laundry detergent, the customer can press the button and an order will automatically be placed for the product and shipped to the customer. While BUTTONS are currently only available to select MEMBERS that receive an invitation, they may be available to all CUSTOMERS in the future.

#### **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). Further, the Department's regulations regarding Private Letter Rulings provide that "[i]f there is case law or there are regulations dispositive of the subject to the request, the Department will decline to issue a letter ruling on the subject." 86 Ill. Adm. Code 1200.110(a)(3)(D). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope however, the following General Information Letter will be helpful in addressing your questions.

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. 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then neither Illinois Retailers' Occupation Tax nor Use Tax would apply. Likewise, 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. If no tangible personal property is being transferred to customers incident to the services being provided, then neither Illinois Service Occupation Tax nor Service Use Tax would apply.

Please note that the Department's regulation, entitled "Sellers of Newspapers, Magazines, Books, Sheet Music and Musical Recordings, and Their Suppliers; Transfers of Data Downloaded Electronically", provides, in relevant part, that 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. 86 Ill. Adm. Code 130.2105(a)(3). However, downloads of canned software, as defined more fully in Section 130.1935 of this Part, are subject to Retailers' Occupation and Use Tax.

Generally, the Department does not consider receipts from the sale of membership fees to be gross receipts from the sale of tangible personal property. Rather, a membership fee is considered an intangible, which is not subject to Retailers' Occupation Tax or Use Tax liability. 86 Ill. Adm. Code 130.401(d). This is the case when the sale of membership rights does not include the transfer of tangible personal property. However, if the membership charge entitles the customer to receive an item of tangible personal property or to receive a service and tangible personal property is transferred incident to that service, then that charge may result in either Retailers' Occupation Tax liability, Service Occupation Tax liability or Use Tax liability, depending upon the serviceman's activities. See 86 Ill. Adm. Code 140.101.

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,

Debra M. Boggess  
Associate Counsel

DMB:mdb

