ST 20-0004-PLR 06/10/2020 COMPUTER SOFTWARE

This letter discusses computer software. See 86 Ill. Adm. Code 130.1935. (This is a PLR.)

June 10, 2020

RE: COMPANY

Dear Xxxx:

This letter is in response to your letter dated December 19, 2019, in which you requested 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

> This private letter ruling is respectfully submitted to the Illinois Department of Revenue ("Department") on behalf of our client, COMPANY. (d/b/a COMPANY1) (hereinafter referred to as COMPANY1) pursuant to Ill. Admin Code § 1200.110.
>
> COMPANY1 requests guidance regarding the application of Illinois sales and use tax to certain services the company provides to its customers. We have attached a completed Illinois Power of Attorney Form (Form IL 2848) for you reference, attached hereto as **Exhibit A**.
>
> COMPANY1 is not currently registered for Illinois sales and use tax purposes. COMPANY1 has not been contacted by the State of Illinois, the Multistate Tax Commission, or any other agent thereof for purposes of an audit with regard to an Illinois state tax obligation, if any. To the best of their knowledge, COMPANY1 and its REPRESENTATIVE, affirm that the Department has not previously ruled on the same or a similar issue for COMPANY1, nor has the taxpayer or its representative previously submitted the same or a similar issue to the Department, but withdrew it before a ruling was issued.

To facilitate your review of the information necessary to render a response to this information request, we have presented the request in the following manner:

I. Facts
II. Issue
III. Pertinent Authority
IV. Discussion
V. Ruling Request

## *I. Facts*

COMPANY1 provides a web-based fleet management service for handling the administration, management, and record-keeping of motor vehicle fleets. *See* Sample COMPANY1 Agreement, attached as **Exhibit B**; and Sample COMPANY1 Invoice, attached as **Exhibit C**. COMPANY1 provides its services via a "Software as a Service" ("SaaS") model. This SaaS model is a web-based software model that allows a consumer to access a vendor's software application that is running on a cloud-based infrastructure. Under this model, the software resides exclusively on the vendor's server and is accessed by the customer via the Internet. Customers generally cannot install, download, or transfer the application software to their own computers. The SaaS provider owns, operates, and maintains the software applications, as well as the servers that support the application software. Thus, the customer has no control over the network, servers, operating systems, storage, or application capabilities.

In 20XX, COMPANY1 developed an application which it provides to its customers for free. Customers have the option of downloading the application to a personal device, such as a phone, table, etc., which the customer can then use to more easily upload vehicle information necessary for fleet management. COMPANY1 does not provide the customer with the personal device (i.e., tablet, cell phone, etc.) for use with the application; nor does it provide any other tangible personal property.

For example, a truck driver typically uses the application on his/her cell phone to upload information regarding fuel purchases, such as fuel cost, fuel quantity, vehicle condition, or to keep track of mileage of the vehicle. Prior to the introduction of the application, a truck driver would keep a manual paper log of the same information and turn the log into the office at the end of a trip for manual entry into the fleet management system.

Historically, the user of the application could only upload information into the application when they were connected to the Internet. However, COMPANY1 recently introduced a limited "opt-in" feature that allows the user to enter information specific to vehicle inspections into the application whether or not the are connected to the Internet, which can be uploaded at a later time. However, the majority of other data and information related to fleet management has to be entered into the application while connected to the Internet.

It is important to note that the users of the application are typically the motor vehicle operators, who only have access to a portion of the platform for purposes of data entry. The individuals using the fleet management software solution for purposes of managing the vehicle fleet typically view the data through a web portal on their computers but will also have the ability to view the information on the application as well.

Finally, it is worth noting that the application does not have the capability of sending or receiving messages, such as communications with a dispatcher, etc. The application is used solely for uploading data related to fleet management.

## *II. Issue*

**A. Whether COMPANY1's provision of web-based fleet management services via a SaaS model are [sic] subject to Illinois' Retailers' Occupation Tax, Use Tax, Service Occupation Tax or Service Use Tax.**

## *III. Pertinent Authority*

### Generally

In Illinois, the tax commonly referred to as a "sale and use tax," is actually four distinct occupation and privilege taxes that are imposed on the sale and use of tangible personal property in Illinois.

The Retailers' Occupation Tax (ROT) is imposed on all persons engaged in the business of selling tangible personal property at retail in the state.[1] The Use Tax (UT) is a complementary privilege tax imposed on the privilege of using tangible personal property in Illinois, which is purchased at retail.[2] "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."[3]

The Service Occupation Tax (SOT) is imposed on tangible personal property transferred by a serviceperson as an incident to the provision of a service.[4] The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities.[5] The serviceman's liability may be calculated in one of four ways:

(1) separately-stated selling price of tangible personal property transferred incident to service;
(2) 50% of the serviceman's entire bill;
(3) Service Occupation Tax on the serviceman's cost price if the serviceman is a registered de minimis serviceman; or
(4) Use Tax on the serviceman's cost price if the serviceman is de minimis and is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.[6]

[1] 35 ILCS 120/2.
[2] 35 ILCS 105/3.
[3] 35 ILCS 120/1.
[4] 35 ILCS 115/3; 86 Ill. Admin. Code § 140.101(a).
[5] Ill. Priv. Ltr. Rul. ST 17-0006-PLR (8/14/2017) at p. 11.
[6] *Id.*

The Service Use Tax (SUT) is a complementary privilege tax imposed on the privilege of using in Illinois real or tangible personal property that is acquired as an incident to the purchase of a service.[7]

**Information or Data**

Information or data that is electronically transferred or downloaded is not considered the transfer of tangible personal property in Illinois.[8]

**Computer Software**

In Illinois, computer software (other than custom software programs) is included within the statutory definition of "tangible personal property," and its sale or use is taxable.[9] "Computer software" means "all types of software including operational, applicational, utilities, compliers [sic], template, shells and all other forms."[10] 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.[11] 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."[12]

However, a license of software is <u>not</u> 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.[13]

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[7] 35 ILCS 110/3.
[8] 86 Ill. Admin. Code § 130.2105(a)(3); *see also* Gen. Info. Letter No. ST 11-0052 (6/30/2011) ("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.")
[9] 35 ILCS 120/1; 35 ILCS 120/2; 35 ILCS 115/3; 35 ILCS 110/3; 86 Ill. Admin. Code § 140.125(x).
[10] 86 Ill. Admin. Code § 140.125(x).
[11] *Id.*
[12] *Id.*; 86 Ill. Admin. Code § 130.1935(a)
[13] 86 Ill. Admin. Code § 130.1935(a)(1).

The Department has stated that software licensed over the Internet requiring the customer to check a box that states he or she accepts the license terms, does not constitute a written agreement signed by the licensor and the customer for purposes of Ill. Admin. Code 130.1935(a)(1)(A).[14] To meet the signature requirement for an exempt software license, the agreement must contain the written signature of the licensor and customer, either in ink or electronically.[15]

If a transaction does not involve the transfer of any tangible personal property to the customer, then it generally would not be subject to the ROT, UT, SOT or SUT.[16]

**Application Service Providers**

In Illinois, the provision of Software as a Service ("SaaS"), also known as an Application Service Provider ("ASP"), is not taxable: "computer software provided through a cloud-based delivery system – a system in which computer software is never downloaded onto a client's computer and is only accessed remotely – is not subject to tax."[17]

A provider of SaaS is acting as a serviceman and the transaction would not be subject to tax in Illinois where no tangible personal property is transferred to the customer.[18] If a SaaS provider provides to its subscribers an API, applet, desktop agent or a remote access agent to enable the subscriber to access the provider's network and services, the Department has held that the subscriber is receiving computer software.[19]

However, if an Illinois customer downloads computer software for free (such as a mobile application) from an out-of-state retailer's website/server, the retailer "has exercised no power or control over the property in Illinois."[20] The Department found that in that instance, the retailer – or donor – would have exercised no taxable use of the property in Illinois. Furthermore, the customer – or donee – would incur no Use Tax liability for the retailer to collect and remit to the State of Illinois.[21]

## *IV. Discussion*

### A. COMPANY1's provision of web-based fleet management services via a SaaS model are <u>not</u> subject to Illinois' Retailers' Occupation Tax, Use Tax, Service Occupation Tax or Service Use Tax, and any tangible personal property provided via a mobile application meets the 5-part test for software licenses and would not be considered a taxable retail sale.

COMPANY1 provides a web-based fleet management service for handling the administration, management, and record-keeping of motor vehicle fleets. See <u>Sample</u>

[14] *See, e.g.*, Ill. Gen. Info. Letter No. ST 12-0011-GIL (2/29/2012); Ill. Gen. Info. Letter No. ST 19-0007-GIL (3/20/2019).
[15] Ill. Priv. Ltr. Rul. ST 18-0010-PLR (9/26/2018).
[16] Ill. Priv. Ltr. Rul. ST 17-0006-PLR (8/14/2017).
[17] *See* Ill. Gen. Info. Letter No. ST 19-0007-GIL (3/20/2019) at p. 4; Ill. Priv. Ltr. Rul. ST 17-0006-PLR (8/14/2017); Ill. Gen. Info. Letter No. ST 16-0038-GIL (8/18/2016).
[18] *See, e.g.*, Ill. Priv. Ltr. Rul. ST 17-0007-PLR (3/2/2017) at p. 5.
[19] Il. Gen. Info. Letter No. ST 19-0007-GIL (3/20/2019) at p. 4.
[20] *Id*.
[21] *Id.*

COMPANY1 Agreement, attached as **Exhibit B**; and Sample COMPANY1 Invoice, attached as **Exhibit C**. COMPANY1 provides its services via a "Software as a Service" ("SaaS") model. As such, COMPANY1's customers access the service via the Internet, but have no control over the network, servers, operating systems, storage or proprietary software used to provide the service.

In 20XX, COMPANY1 developed an application which it provides to its customers free of charge. Customers have the option of downloading the application to a personal device, such as a phone, tablet, etc., which the customer can then use to more readily upload vehicle information necessary for its fleet management. COMPANY1 does not provide the customer with the personal device (i.e., table, cell phone, etc.) for use with the application nor does it provide any other tangible personal property. Typically, a truck driver uses the application on his/her cell phone to upload vehicle information regarding fuel purchases such as fuel cost, fuel quantity, or to keep track of mileage, etc. Prior to the introduction of the application, a truck driver would keep a manual paper log of the same information and turn the log into the office at the end of a trip for manual entry into the fleet management system.

COMPANY1's provision of fleet management services involves both a nontaxable service (i.e. the provision of fleet management services via a SaaS model), and tangible personal property (the application). Under the SaaS model, COMPANY1's proprietary software resides exclusively on its servers and is accessed by the customer via the Internet. COMPANY1's customers cannot install, download, or transfer the proprietary software to their own computers. COMPANY1 owns, operates, and maintains the proprietary software used to provide its fleet management services. COMPANY1's customers have no control over the network, servers, operating systems, storage, or software capabilities.

Illinois does not impose sales tax on SaaS.[22] In fact, there have been several rulings over recent years which expressly state that "computer software provided through a cloud-based delivery system – a system in which computer software is never downloaded onto a client's computer and is only accessed remotely – is not subject to tax."[23]

However, COMPANY1's customers may also download an application to their personal devices free of charge, which may be used to more easily upload vehicle information to COMPANY1's fleet management system. The term "computer software" is broadly defined to include "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."[24] SaaS providers who offer its subscribers an API, applet desktop agent or a remote access agent as a means for

[22] 35 ILCS 120/1; 35 ILCS 120/2; 35 ILCS 115/3; 35 ILCS 110/3; *See also* Ill. Gen. Info. Letter No. ST 19-0007-GIL (3/20/2019); Ill. Priv. Ltr. Rul. ST 17-0006-PLR (8/14/2017); Ill. Gen. Info. Letter No. ST 16-0038-GIL (8/8/2016).
[23] *See* Ill. Gen. Info. Letter No. ST 19-0007-GIL (3/20/2019); Ill. Priv. Ltr. Rul. ST 17-0006-PLR (8/14/2017); Ill. Gen. Info. Letter No. ST 16-0038-GIL (8/8/2016).
[24] 86 Ill. Admin. Code § 130.1935(a)

the subscriber to access the provider's services are deemed to be offering its customers computer software.[25]

The Department, however, recently held in General Information Letter ST 19-0007-GIL (3/20/2019) that:

> if an Illinois customer downloads computer software for free from an out-of-state retailer's web site or server that is also located out-of-state, the retailer, even though it is donating tangible personal property to the customer, *has exercised no power or control over the property in Illinois.* In this instance, *the donor would not have made any taxable use of the property in Illinois*. The customer, the donee, would incur no Use Tax liability for the retailer to collect and remit to Illinois. Illinois does not tax subscriptions.[26]

In this case, there is no separate charge for the downloaded application, but rather the application is available to customers free of charge as an incidental component to the fleet management service, which is provided via a SaaS model. COMPANY1's Illinois-based customers are downloading the mobile application from servers located outside of Illinois. Therefore, pursuant to recent Department interpretation, COMPANY1 has not exercised any power or control over the computer software in Illinois, and thus did not make any taxable use of the property in Illinois. Neither the customer (as donee) nor COMPANY1 (as donor) would incur Use Tax liability in conjunction with the download of the mobile application.

Based on the foregoing, the fleet management services provided by COMPANY1 via a SaaS model should be considered a nontaxable service under Illinois' retailers' occupation and use tax laws.

Furthermore, COMPANY1's mobile application would also meet the five-part test for software licenses under Ill. Admin. Code § 130.1935(a)(1) and as such, would not be considered a taxable retail sale in Illinois. Under the regulation, 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,

[25] *See* Ill. Gen. Info. Letter No. ST 19-0007-GIL (3/20/2019); Ill. Gen. Info. Letter No. ST 17-0007-GIL (3/2/2017); Ill. Gen. Info. Letter No. ST 16-0034-GIL (8/17/2016).
[26] Ill. Gen. Info. Letter No. ST 19-0007-GIL (3/20/2019) (emphasis added).

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.[27]

In the present case, COMPANY1's downloaded application meets all the requirements of the five-part test:

1. COMPANY1's license of its SaaS models for provision of its fleet management services are evidenced by a written agreement signed by the licensor and the customer. See Sample COMPANY1 Agreement, **Exhibit B** at p. 6. As discussed above, in addition to granting its customers access to its services via the Internet, COMPANY1 developed an application which it provides to its customers free of charge. Customers have the option of downloading the application to a personal device, such as a phone, tablet, etc., which the customer can then use to more readily upload vehicle information necessary for its fleet management. The agreement provides that the "Terms of Service" (attached hereto as Terms of Service, **Exhibit D**) found on COMPANY1's website are incorporated as part of every Agreement. *See* Sample COMPANY1 Agreement, **Exhibit B**, at p. 2. These "Terms of Service" specifically state that "these terms of service are legally binding contract between [Company] and COMPANY and govern [Company's] access to any service we provide…through our websites and through our mobile apps." Therefore, both the provision of its services via the web or mobile application are governed by the terms of the written, signed agreement – thus satisfying the first condition.

2. COMPANY1's license agreement terms restrict the customer's duplication and use of the software. The terms of COMPANY1's license agreement typically provide as follows:

   - **License**: Company shall grant a nonexclusive, nontransferable license for an unlimited number of users during the term of this Agreement for the use of COMPANY1 Manage, a fleet management platform for managing Customer's assets.

   *See* Sample COMPANY1 Agreement, **Exhibit B** at p. 2. Furthermore, the "Terms of Service' provide as follows:

   - [Company] may not attempt to modify, translate, adapt, edit, copy, decompile, disassemble, or reverse engineer any software used or provided by us in connection with the Service.

   *See* Terms of Service - Account Terms, **Exhibit D** at p. 2, ¶ 8.

[27] 86 Ill. Admin. Code § 130.1935(a)(1).

3. COMPANY1's license agreement 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 COMPANY1.

    - **License**: Company shall grant a nonexclusive, nontransferable license for an unlimited number of users during the term of this Agreement for the use of COMPANY1 Manage, a fleet management platform for managing Customer's assets.

    *See* Sample COMPANY1 Agreement, **Exhibit B** at p. 2. In addition, the "Terms of Service" provides [sic] as follows:

    - [The Company] shall not copy, sell, transfer, distribute, publish, or assign your license to our Service in any format to any third party."

    *See* Terms of Service - Intellectual Property, **Exhibit D** at p. 6.

4. COMPANY1 has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or of permitting the license to make and keep an archival copy.

5. COMPANY1's SaaS license agreements typically provide that all copies of the software must be destroyed at the end of the license period. Pursuant to the "Terms of Service":

    > All of [the Company's] information will be immediately deleted from the Service (including our secure servers used to store your information) upon cancelation. If you want to preserve your information, you must export your information before canceling your account. Your information cannot be recovered once your account is canceled.

    *See* Terms of Service – Cancellation and Termination, **Exhibit D** at p. 4.

Thus, COMPANY1's mobile application license clearly meets the five-part test provided by Ill. Admin. Code 130.1935(a)(1), and therefore, would not be considered a taxable retail sale in Illinois.

## *V. Ruling Request*

Based on the foregoing, COMPANY1 respectfully requests that the Department rule that COMPANY1's provision of fleet management services delivered via a SaaS model constitutes a nontaxable service and is not subject to Illinois' Retailers' Occupation Tax, Use Tax, Service Occupation Tax or Service Use Tax.

In the event that the Department determines that COMPANY1's services are subject to tax, we respectfully request an opportunity to discuss this matter with the Department before a final letter ruling is issued. In addition, we respectfully reserve the right to pursue a voluntary disclosure agreement to disclose any potential sales or use tax liabilities, if necessary.

Thank you again for your consideration of this matter. If you have any questions, please do not hesitate to call me at (215) 837-9767.

**DEPARTMENT'S RESPONSE:**

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. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

"'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." 35 ILCS 120/2-25. Generally, sales of "canned" computer software are taxable retail sales in Illinois. Canned computer 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. 86 Ill. Adm. Code 130.1935. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. 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 86 Ill. Adm. Code 130.1935(c)(3). Computer software that is not custom software is considered to be canned computer software.

If transactions for the licensing of computer software meet 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. 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 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.

If a license of canned computer software does not meet all the criteria the software is taxable.

In order to comply with the requirements as set out in Section 130.1935(a)(1), there must be a written "signed" agreement. A license agreement in which the customer electronically accepts the terms by clicking "I agree" does not comply with the requirement of a written agreement signed by the licensor and customer. The Department previously held that an electronic signature did not comply with the requirement of Section 130.1935(a)(1)(A) that the license be evidenced by a written agreement signed by the licensor and the customer. ST 06-0005-PLR (December 16, 2006). In ST 18-0003-PLR (February 8, 2018), the Department decided that an electronic license agreement in which the customer accepts the license by means of a signature in electronic form that is attached to or is part of the license, is verifiable, and can be authenticated will comply with the requirement of a written agreement signed by the licensor and customer. See ST 18-0010-PLR (September 26, 2018) for examples of acceptable written signatures. A license agreement in which the customer electronically accepts the terms by clicking "I agree" remains unacceptable.

Currently, computer software provided through a cloud-based delivery system – a system in which computer software is never downloaded onto a client's computer and is only accessed remotely – is not subject to tax.

Computer software is defined broadly in the Retailers' Occupation Tax Act. If a provider of a service provides to the subscriber an API, applet, desktop agent, or a remote access agent to enable the subscriber to access the provider's network and services, the subscriber is receiving computer software. Although there may not be a separate charge to the subscriber for the computer software, it is nonetheless subject to tax, unless the transfer qualifies as a non-taxable license of computer software.

If an Illinois customer downloads computer software for free from an out-of-state retailer's web site or server that is also located out-of-state, the retailer, even though it is donating tangible personal property to the customer, has exercised no power or control over the property in Illinois. In this instance, the donor would not have made any taxable use of the property in Illinois. The customer, the donee, would incur no Use Tax liability for the retailer to collect and remit to Illinois. Illinois does not tax subscriptions.

Based on the facts provided in your letter, the Department concludes that revenues received from subscriptions of the COMPANY1 web-based fleet management service are not subject to tax. The Department also concludes that the application downloaded for free by its subscribers from a server located in another state are not subject to tax. The Department expresses no opinion whether the license of the mobile application meets the five-part test.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This

Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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
Chairman, Private Letter Ruling Committee

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