

When a serviceman purchases at retail from an unregistered, out-of-State supplier tangible personal property that the serviceman does not transfer to service customers, but instead uses or consumes in Illinois, the serviceman must self-assess Use Tax on that tangible personal property and remit Use Tax to the Department, with credit allowed for any tax properly due and paid to another state. See 86 Ill. Adm. Code 140.126(c) and 86 Ill. Adm. 150.310(a)(3). (This is a GIL.)

November 4, 2022

REPRESENTATIVE'S NAME/ REPRESENTATIVE'S ADDRESS

Dear Ms. XXX:

This letter is in response to your letter, 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](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

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 of the request, the Department will decline to issue a letter ruling on the subject." 2 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. In your letter you have stated and made inquiry as follows:

Re: COMPANY  
##-#####-#  
ADDRESS

To Whom it May Concern:

We are requesting a letter ruling on behalf of COMPANY ("COMPANY", "taxpayer", or "company") a STATE1-based taxpayer with a distribution center in STATE2 and specimen-processing laboratory in STATE3. The company's customers are located all over the United States and abroad. COMPANY has been selling its services to Illinois customers since 20## and has never been contacted by the state for this or any other tax matter. The state has not issued an opinion on this matter previously, nor has the taxpayer solicited an opinion on the matter from the state.

COMPANY is an online provider of ancestral and health history reports to individual customers. The reports are generated from the company's analysis of the customers' DNA (saliva specimens). The customers collect their own saliva using a kit which is mailed to them by the company from a distribution center located in STATE2. Once the customer has used the kit, they mail it from their home to a company-owned lab in STATE3 where the DNA specimens are processed. The customers then access their individualized, personal reports through the company's website.

We would like some assistance in confirming how Illinois will treat the company's sales to its customers for sales and use tax purposes. Please help us address the following:

1. Where is the service to the customers deemed to be provided?
2. If the service is deemed to be provided in Illinois, how will the state categorize the service being provided to the taxpayer's customers?
3. Given the use of TPP (the specimen-collecting kit) in performance of the service, would the state consider the non-taxable service "bundled" with TPP to be taxable?
4. Are the kits used by the customers to collect their saliva samples subject to use tax in Illinois?

Our own analysis is as follows, and we are asking the state to provide feedback and additional guidance:

1. To date, the company has considered the situs of the sale to be the ship-to location of the customer (the address to where the kits are initially mailed), and presumably the location from which the customer will access the company's website to view their individualized reports. Given that the analysis

from which the reports are generated is completed in STATE3, would the Illinois Department of Revenue consider the service to have been provided in STATE3 rather than at the customer's home address?

2. The DNA analysis and provision of ancestral/health history reports are services not expressly subject to tax in Illinois, and therefore, this service is not taxable in the state.
  - a. *Illinois Dept. of Revenue General Information Letter No. ST07-0125-GIL, 08/16/2007* – Illinois does not generally impose sales tax on the provision of services so long as no tangible goods are provided as part of the service.
  - b. *Illinois Dept. of Revenue Private Letter Ruling ST 12-0007-PLR 08/17/2012 Use Tax* – Illinois issued a Private Letter Ruling to a company in the business of selling non-familial breast cancer screening kits to individuals and physicians in the state, and determined sales tax does not apply to the testing/diagnostic services (which are provide by a lab outside of IL), and stated use tax on the kits was a “grey area” due to the nature of the services being provided.
3. The cost of the kit (less than \$1 USD) relative to the cost of the service (generally, \$99 USD) is insignificant, and the use of the kit is integral to the provision of the service. Other states, in auditing the taxpayer, have determined the kit is not subject to sales tax, but is rather consumed in the provision of a non-taxable service.
4. Use tax does not apply in Illinois to the kits used in collecting the saliva samples because use tax is paid to STATE2 when the kits are shipped to customers.
  - a. STATE2 has a hybrid origin/destination scheme where sales and use tax are concerned.
  - b. Because the service being provided by the company is non-taxable in most states, sales tax will not be collected from customers based at their location, therefore, the kits consumed in providing the service are subject to use tax.

- c. The company has physical nexus in STATE2 because it has inventory and a distribution warehouse located in the state, and therefore, STATE2 considers the kits to be subject to use tax in the state (the point of origin) when they are shipped to customers.
- d. At most, the kits would be subject to use tax in Illinois, with credit deducted for the use tax paid in STATE2. The cost of the kits, however, is de minimis (less than \$1 USD), and therefore, the differential use tax would be immaterial to Illinois.
- e. *IL Rev Rule 140.126* – in the event the kits are subject to use tax, the reduced 1% rate would apply.

We appreciate your assistance with these questions, appreciate the Department's discretion when publishing its response to this inquiry, and look forward to the Departments response and findings.

#### **DEPARTMENT'S RESPONSE:**

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. 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.

Retailers' Occupation and Use Taxes do not apply to sales of service. The Service Occupation Tax Act and Service Use Tax Act are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. If a transaction does not involve the transfer of any tangible personal property to the customer, then the taxpayer generally would not be subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax. However, if a serviceman purchases at retail from an unregistered, out-of-State supplier tangible personal property that the serviceman does not transfer to service customers, but instead use or consumes in Illinois, the serviceman must self-assess Use Tax on that tangible personal property and remit Use Tax to the Department. See 86 Ill. Adm. Code 140.126(c).

If a business is providing a service to its customers in Illinois, it would be considered a serviceman. If this serviceman does not transfer any tangible personal property incident to that service, then no Service Occupation Tax would apply to the

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sale of service. However, if a business provides tangible personal property, such as a specimen collection kit, to its service customers in Illinois to use in its provision of service, then that business itself is using tangible personal property in Illinois and would owe Use Tax on its cost price of the tangible personal property.

The Use Tax rate is 6.25% for general merchandise and 1% for food, drugs, and medical appliances. 86 Ill. Adm. Code 140.126. Supplies, such as cotton swabs, do not qualify for the reduced 1% rate. See 86 Ill. Adm. Code 130.311. If an item, such as a specimen testing kit does not meet the requirements for a medical appliance, it would not qualify for the reduced tax rate of 1%. If any tax is properly due and paid in another state on tangible personal property brought into Illinois, then the taxpayer may credit the amount of that tax paid to the other state in determining its Illinois Use Tax liability. See 86 Ill. Adm. Code 150.310(a)(3).

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,

Kimberly Rossini  
Associate Counsel

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