

ST 24-0036-GIL 11/06/2024 COMPUTER SOFTWARE

The sale of computer software, including online video games, game extras, and in-game currency, downloaded onto a customer's computer in Illinois constitutes the sale of tangible personal property subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.101 and 130.1935. (This is a GIL.)

November 6, 2024

COMPANY  
NAME  
EMAIL

Dear NAME:

This letter is in response to your letter dated September 5, 2024, 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 <https://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:

Hi,

Thank you for the information.

I'd like to point out again as mentioned in the previous email below that we are a game distribution company and so the in-app purchases are virtual items (in-game currency, tools, etc.). Are these considered as tangible items and therefore subject to use tax in IL? Thank you.

(Third Email of August 27, 2024)

Hope all is well.

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I'd like to reach out further for the below sales tax question. You mentioned that in-app purchases are subject to Illinois sales tax. When I did the sales and use tax registration, it did not let me to select sales tax as we are a remote seller that does not have physical location in Illinois. Therefore, we selected use tax and are currently filing the use tax return. However, it also looks like the use tax is only applicable for personal property. Do in-app purchases fall under the personal property category and subject to use tax? Thank you.

(Second Email of July 3, 2024)

Further to your previous email below, I'd like to point out that the game (software) is free to download. Additionally, below is what I received from a tax advisor stating that in-app purchases are nontaxable because it is considered transfers of data downloaded electronically. "In-app purchases are downloaded electronically and thus, do not constitute the taxable transfer of tangible personal property. See Ill. Admin. Code tit. 86, § 130.2105(a)(3)."

Therefore, I'd like to confirm with you and see if the above understanding is not correct. Any comments and/or thoughts would be greatly appreciated. Thank you.

(Original Email of June 7, 2024)

Dear Sir or Madam,

We are contacting you regarding the sales and use tax question in the State of Illinois. We are a foreign corporation based in COUNTRY and provide online video games to players in the US. The online game is free to download in the app store and the players can choose to make in-game purchases for game currency, weapon, equipment, etc. to enhance their gaming experience and it is purely optional. All the in-game purchases made can only be used in the game and cannot be converted to real money or any equivalent.

We looked through the state department website and could not find a clear answer whether the service we are providing is subject to sales and use tax in the State of Illinois. Could you please advise and provide the relevant tax codes, if possible? Thank you.

**DEPARTMENT'S RESPONSE:**

### Retailers' Occupation Tax and Use Tax

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 35 ILCS 120/2; 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 35 ILCS 105/3; 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 retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

If a transaction does not involve the transfer of any tangible personal property to the customer, then it generally would not be subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax. Information or data that is electronically transferred or downloaded is not considered the transfer of tangible personal property in this State. The Department does not consider the viewing, downloading, or electronically transmitting of video, text, and other data over the internet to be the transfer of tangible personal property. See 86 Ill. Adm. Code 130.2105(a)(3).

A remote retailer is a retailer that does not maintain within Illinois, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether that place of business or agent is located in Illinois permanently or temporarily or whether the retailer or subsidiary is licensed to do business in this State. A retailer that fulfills any orders from its inventory in Illinois is not a remote retailer. See 35 ILCS 120/1; 86 Ill. Adm. Code 131.105. As of January 1, 2021, a remote retailer is engaged in the occupation of selling at retail in Illinois for purposes of the Retailers' Occupation Tax Act if either of the following thresholds is met:

- A) the cumulative gross receipts from sales of tangible personal property to purchasers in Illinois are \$100,000 or more; or
- B) the remote retailer enters into 200 or more separate transactions for the sale of tangible personal property to purchasers in Illinois.

See 35 ILCS 120/2(b); 86 Ill. Adm. Code 131.115. A remote retailer meeting either of these thresholds is liable for all applicable State and local retailers' occupation taxes administered by the Department on all retail sales shipped or delivered to Illinois purchasers. See 86 Ill. Adm. Code 131.110(a) and 131.115(a). Sections 131.115 and

131.120 further discuss how to calculate sales to determine whether a retailer meets either of these thresholds.

If you are a remote retailer meeting either threshold, you are deemed to be engaged in the business of selling at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. State and local retailers' occupation taxes are incurred at the rate in effect at this location. See 86 Ill. Adm. Code 131.110(b).

If, pursuant to the criteria set out in Section 131.115, the remote retailer determines that its sales to Illinois purchasers did not meet either threshold, it is not required to collect and remit State and local retailers' occupation taxes. However, it may notify the Department that it wishes to change its registration status to collect and remit use tax as a courtesy to its Illinois purchasers, since those purchasers will still incur a Use Tax liability that they must otherwise self-assess and remit directly to the Department. See 86 Ill. Adm. Code 131.115(d). Remote retailers not required to remit State and local retailers' occupation taxes must redetermine, on a rolling quarterly basis, whether they are obligated to begin remitting State and local retailers' occupation taxes. See 86 Ill. Adm. Code 131.115(e).

Please review the criteria for determining whether your company meets either threshold set out in 86 Ill. Adm. Code 131.115. If your company meets either threshold, you must change your registration with the Department to reflect your new status and begin collecting and remitting all State and local retailers' occupation taxes in effect at the Illinois location to which the tangible personal property is shipped or delivered or at which possession is taken by the purchaser. See 86 Ill. Adm. Code 131.125. However, if your company does not meet either threshold, you may continue in your current registration status with the Department and remit Illinois Use Tax as a courtesy to your customers at the rate of 6.25%.

#### Donors of Tangible Personal Property

If the arrangement between a business and a customer is such that the business provides tangible personal property to the customer free-of-charge, then a donor/donee situation may exist. A donor who purchases tangible personal property and gives the tangible personal property to a donee makes a taxable use of the property when making the gift. 86 Ill. Adm. Code 150.305(c). A donor owes Use Tax on the donor's cost price of the tangible personal property that is transferred. Although the donor/user is not taxed on the value of the finished product which it produces themselves, such donor/user is taxable on the purchase price of the tangible personal property that the donor/user purchases and incorporates into such finished product which it uses in this State, such purchase being a purchase at retail or a purchase for use. 86 Ill. Adm. Code 150.305(b).

#### Computer Software

“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, including video games, that is not custom software is considered to be canned computer software.

Computer software is defined broadly in the Retailers’ Occupation Tax Act. However, 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. If a provider of such 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. 86 Ill. Adm. Code 130.1935(a)(3) and (4). 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. See 86 Ill. Adm. Code 130.1935(a)(1) for taxability of licenses. Your letter has not stated any facts indicating this is a computer software licensing issue.

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.

According to your emails, the company provides online game play without a subscription and sells virtual items that the user can purchase and use in the game as currency or tools. In-app purchases that are in addition to the original, free download are taxable under the Retailers’ Occupation Tax. While the original download of the game from a server located outside of Illinois would not be a taxable event in Illinois, the subsequent sale of extras and in-game currency would constitute a sale of tangible personal property in Illinois subject to State and local retailers’ occupation tax. A taxpayer making such sales would have a remittance obligation as long as a threshold described

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above has been met. If no tax remittance threshold has been met, a taxpayer may register to voluntarily remit Illinois Use Tax as a courtesy to its customers.

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Kimberly Rossini  
Associate Counsel

KAR:slc