

If a provider transfers to a customer a web application to enable the customer to access the provider's network and services, the subscriber is receiving computer software that is subject to tax. However, if an Illinois customer downloads computer software for free, such as an app, from an out-of-State serviceperson's website or server that is also located out-of-State, the serviceperson, even though it is donating tangible personal property to the customer, has exercised no power or control over the property in Illinois, and the donor would not have made any taxable use of the property in Illinois. See 86 Ill. Adm. Code Parts 130 and 140. (This is a GIL).

July 14, 2026

NAME
TITLE
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your letter dated March 25, 2026, 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.

INQUIRY:

Enclosed is a request for the Department of Revenue (the "Department") to issue a Private Letter Ruling ("PLR") regarding our client's sales of subscriptions to access various types of content via a web application ("app"). We ask that the Department consider the facts and legal analysis

below and provide a response regarding the application of Illinois Retailer's Occupation Tax ("ROT") to the charges for the subscriptions. We understand that the issuance of a PLR is subject to the accuracy and completeness of the facts contained herein. If additional information or clarification of the facts is required for the Department to issue a ruling, we are happy to supply what is required to meet the Department's needs.

To the best of the knowledge of both COMPANY1 and COMPANY2, the Department has not previously ruled on the same or a similar issue for COMPANY1 or a predecessor. Additionally, neither COMPANY1 nor any representatives have previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued. The tax period at issue is January 2024 through the current period. No Illinois tax audit or litigation is pending between COMPANY1 and the Department.

Background

COMPANY1 ("COMPANY1" or the "Company") sells subscription plans to three health and fitness content web applications within the United States. The Company's office and technical infrastructure is located outside of Illinois and the Company has no physical presence in the state. Users will pay a periodic subscription charge to COMPANY1 for use of the web applications to access content. Once the user stops paying the subscription charge, the content is no longer available to the user. Below are descriptions of the features of each app and general information applicable to all of the apps:

PRODUCT1

- Links to apps: Google Play Market and App Store.
- App functionality
 - Workout plan
 - Meal plan
 - 1-on-1 consultations with a coach (via text)
 - Performance metrics tracking via our fitness band or sync with Apple Health or Google Fit
 - Fitness Challenges
 - Guides on health and fitness-related topics.
- Users can modify goals, workout programs, levels, equipment used, workout locations, exercises, meals, and current weight within the app.
- Subscription/customer agreement: Terms of Service and Subscription Policy

PRODUCT2

- Links to apps: Google Play Market and App Store.
- App functionality:
 - Workout plan
 - Meal plan
 - 1-on-1 consultations with a coach (via text messaging)
- Progress tracking on four key body qualities: strength, endurance, coordination, and flexibility
- Users can modify goals, workout types, workout days, meal plan preferences, and current and target weight within the app.
- Subscription/customer agreement: Terms of Service and Subscription Policy

PRODUCT3

- Links to apps: Google Play Market and App Store.
- App functionality:
 - Meal plan
 - Workouts
 - Calorie tracker
 - 1-on-1 consultations with a coach (via text)
 - Water tracker
 - Intermittent fasting plans
 - Other challenges, courses, and guides on health- and fitness-related topics
- Users can modify goals, current weight, meals, and meal plan settings within the app.
- Subscription/customer agreement: Terms of Service and Subscription Policy

All three applications have nearly identical functionality and characteristics:

- The applications are downloaded free of charge.
- To access the workout / meal plan, the users must first fill in an initial health questionnaire within the application (free of charge). The questionnaire consists of 40-50 questions. Based on the answers provided to the questions, the app's algorithm prepares a customized program for the user.
- The program content is only accessible after the subscription payment is made.
- There are no web versions of the applications or content.
- There are several subscription plans available for a purchase – 1, 3, 6 and 12 month subscription plans. Pricing varies based on the length of the subscription.

- The workout/meal program can only be viewed on the smartphone application.
- Video content cannot be downloaded, only streamed via the apps.
- The meal plans are customized and non-downloadable. It is impossible to calculate the exact number of meal plan variations as they depend on the ingredients a customer wants to include or exclude, food restrictions, and target weight.
- Some subscriptions include limited life coaching.
- The users are able to change the program content (fully/partially) at any time and at their sole discretion within the applications.

Applicable Law and Analysis

Illinois imposes ROT on persons engaged in the business of selling tangible personal property at retail and on the transfer of such property by a service person in connection with the rendered services. Computer software is included in the definition of tangible personal property subject to ROT.¹ Prewritten computer

software is considered tangible personal property regardless of the form in which it is transferred or transmitted, including by electronic means.²

The Illinois Department of Revenue (“The Department”) has issued guidance that software accessed via a cloud-based system, where such software is never downloaded, is not subject to ROT as a taxable transfer of tangible personal property.³ The Department’s guidance also provides that “if an Illinois customer downloads computer software for free from an out-of-state retailer’s website 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.” Therefore, the customer would incur no use tax liability for the retailer to collect.⁴

Illinois does not separately define either “information services” or “data processing services” in its ROT statutes. However, Illinois regulations indicate that electronically transferred or downloaded data or information is not deemed to be a transfer of tangible personal property.⁵ Department guidance supports the conclusion that the state does not consider the viewing,

¹ 35 ILCS §§ 120/2a and 120.2-25

² Ill. Admin. Code tit. 86, § 130.1935(a).

³ Ill. Priv. Ltr. Rul. ST 24-0002-PLR (Sept. 17, 2024).

⁴ Ill. Gen. Info. Ltr. ST 21-0001-GIL (Jan. 15, 2021).

⁵ Ill. Adm. Code tit. 86, § 130.2105(a)(3).

downloading or electronically transmitting of information and other data over the internet to be a transfer of tangible personal property.⁶

Internal Revenue Service regulations provide rules for classifying transactions involving “computer programs” and “cloud transactions”.⁷ A computer program is defined as “a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result”⁸. A “cloud transaction” is defined in the regulations as a transaction through which a person obtains on-demand network access to computer hardware, digital content (as defined in § 1.861-18(a)(2)), or other similar resources.⁹ Where a transaction has multiple elements, one or more of which would be a cloud transaction if considered separately, the transaction is classified in its entirety as a cloud transaction if the predominant character of the transaction as determined under § 1.861-18(b)(3) is a cloud transaction.¹⁰

If a provider of a service provides to the subscriber an app or desktop 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 vendor/donor would not have made any taxable use of the property in Illinois. The customer would incur no use tax liability as the customer did not acquire the software from a retail transaction.

In Illinois Private Letter Ruling ST 24-0002-PLR (Sept. 17, 2024), the Department reviewed the taxability of content and services (also provided through an app) that are similar in nature to those provided by COMPANY1. In this PLR, the taxpayer was a foreign-based company with headquarters outside of the United States and whose software and content was hosted on servers outside of Illinois. The taxpayer sold subscriptions to access information through a web site or a mobile application. The content available through the web site and app included customized health, fitness, mental wellness, and nutrition services (“Services”). Customers who paid for a

⁶ Ill. Gen. Info. Ltr. ST 20-0018-GIL (Sept. 28, 2020)

⁷ 26 CFR §§ 1.861-18 and 1.861-19.

⁸ 26 CFR §§ 1.861-18(a)(2)(ii).

⁹ 26 CFR §§ 1.861-19(b).

¹⁰ 26 CFR §§ 1.861-19(c)(2).

subscription received access to body data insights, personal health coaching, workouts, meal plans, and progress tracking.

Additionally, subscribers to the taxpayer's services in ST 24-0002-PLR were prompted to answer a series of questions around their current health and fitness habits and their desired health and fitness goals. The answers were then utilized to provide customized and detailed health and fitness solutions. The health and fitness solutions were solely determined and delivered by the algorithm and not done with any human interaction, direction, or involvement. The Services include compilations (such as access to hundreds of articles that include tips and tricks on weight loss and dieting) and access to prerecorded video workouts. Additional Content included meal plans, progress tracking, and holistic guidance catered to the subscriber's fitness, nutritional, and mental health needs. The Department ultimately determined that the subscription charges to members to access this content through a web site or app was Software-as-a-Service and information services, neither of which is subject to Illinois ROT.

Here, after downloading the app, an COMPANY1 customer must pay a subscription charge to access the content provided through PRODUCT1, PRODUCT2, and/or PRODUCT3. Subscription purchases allow customers access to things such as written meal plans, exercise plans, topical guides, performance metrics, and 1-on-1 text consultations with a coach. The services and content provided by COMPANY1 to customers are primarily Software-as-a-Service, requiring an Internet connection to use app content and features. To access the content, a customer must create an account, sign up for a paid subscription, and download a free app from either the Apple Store or Google Play Store. Whenever the subscription to the content is cancelled or expires, access to the content is no longer available. As outlined above, sales of Software-as-a-Service and data/information accessed through the paid subscriptions are not sales of tangible personal property subject to ROT.

The Taxpayer was unable to locate recent authority contrary to the analysis above.

Conclusion

Based on the facts described above, we ask that the Department issue a PLR determining that the subscription charges for access to and use of content within the Company's three apps are charges for SaaS or information services that are not subject to Illinois ROT. Thank you for your consideration of this

request and please contact me at EMAIL or PHONE if you have questions or need additional information to evaluate this request.

DEPARTMENT'S RESPONSE:

Retailers' Occupation 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. 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. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These two 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. 35 ILCS 105/3-45; 86 Ill. Adm. Code 150.401. 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. 86 Ill. Adm. Code 150.130(b). If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department. 35 ILCS 105/3-45; 86 Ill. Adm. Code 150.701(a).

Service Occupation Tax

Retailers' Occupation Tax and Use Tax do not apply to sales of service. See 35 ILCS 120/2; 35 ILCS 105/3. Under the Service Occupation Tax Act, businesses providing services (i.e., servicepersons) are taxed on tangible personal property transferred as an incident to sales of service. 86 Ill. Adm. Code 140.101. The transfer of tangible personal property to service customers may result in either Service Occupation Tax liability or Use Tax liability for servicepersons, depending upon which tax base they choose to calculate their liability.

Servicepersons may calculate their tax base in one of four ways: (1) Service Occupation Tax on the separately-stated selling price of tangible personal property transferred incident to service; (2) Service Occupation Tax on 50% of the serviceperson's entire bill; (3) Service Occupation Tax on the serviceperson's cost price if the serviceperson is a registered de minimis serviceperson; or (4) Use Tax on the serviceperson's cost price if the serviceperson is de minimis and is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. 86 Ill. Adm. Code Sections 140.106; 140.108; and 140.109.

Using the first method, servicepersons may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicepersons do not wish to separately state the selling price of the tangible personal property transferred, those

servicepersons must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicepersons may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of sales of service. They are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicepersons may account for their tax liability only applies to de minimis servicepersons who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicepersons may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicepersons is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicepersons that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit tax to the Department by filing returns and do not pay tax to their suppliers. They provide suppliers with Certificates of Resale for the tangible personal property transferred to service customers. See 86 Ill. Adm. Code 140.109.

The final method of determining tax liability may be used by de minimis servicepersons that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicepersons may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the serviceperson's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicepersons handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicepersons must register, self-assess, and remit Use Tax to the Department. The servicepersons are considered the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. 86 Ill. Adm. Code 140.108.

If an entity provides services that are accompanied by the transfer of tangible personal property, including computer software, such service transactions are generally subject to tax liability under one of the four methods set forth above. 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.

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. Computer software includes all types of software including operational, applicational, utilities, compilers, templates, shells, and all other forms. 86 Ill. Adm. Code 130.1935(a).

Generally, sales or transfers of “canned” computer software intended for general or repeated use are taxable retail sales in Illinois. Canned software is considered to be tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means, or other media. The sale or transfer by a retailer of computer software which is subject to manufacturer licenses restricting the use or reproduction of the software is also taxable. 86 Ill. Adm. Code 130.1935(a). However, if all of the criteria provided in subsection (a)(1) of Section 130.1935 are met, then neither the sale or transfer of the software nor the subsequent software updates are subject to Retailers’ Occupation Tax. Specifically, a license of software is not a taxable retail sale if:

1. It is evidenced by a written agreement signed by the licensor and the customer;
2. It restricts the customer’s duplication and use of the software;
3. 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;
4. 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
5. 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.

86 Ill. Adm. Code 130.1935(a)(1). If a license of canned computer software does not meet all the criteria, the software is taxable.

Please note that it is very common for software to be licensed over the internet and for the customer to check a box that states that the customer accepts the license terms. Acceptance in this manner does not constitute a written agreement signed by the licensor and the customer for purposes of subsection (a)(1)(A) of Section 130.1935. To meet the signature requirement for an exempt software license, the agreement must contain the written signature of the licensor and customer. An electronic agreement in which the customer accepts the license by means of an electronic signature that is verifiable and can be authenticated and is attached to or made part of the license will comply with this requirement. 86 Ill. Adm. Code 130.1935(a)(1)(i).

A provider of software as a service is acting as a serviceperson. As a serviceperson, the seller does not incur Retailers' Occupation Tax. Service Occupation Tax is imposed upon all persons engaged in the business of making sales of service on all tangible personal property transferred incident to a sale of service, including computer software, and is calculated as explained above.

Computer software is defined broadly in the Retailers' Occupation Tax Act and Service Occupation Tax. 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 a service provides to the subscriber an App, 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 nontaxable 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 as the customer did not acquire the software from a retail transaction. Illinois generally does not tax subscriptions of software as a service.

Moreover, sales of custom computer programs prepared to the special order of the customer may not be a taxable sale. 86 Ill. Adm. Code 130.1935(c)(1). Custom software means the software which results from real and substantial changes to the operational coding of canned or pre-written software in order to meet the specific individualized requirements of the purchaser for his limited or particular use. 86 Ill. Adm. Code 130.1935(c)(2). Custom computer software is not subject to the Retailers' Occupation Tax, Use Tax, Service Occupation Tax or Service Use Tax if the following elements are present:

1. Preparation or selection of the program for the customer's use requires an analysis of the customer's requirements by the vendor; and
2. The program requires adaptation by the vendor to be used in a specific work environment, e.g., a particular make and model of a computer using a specified input or output device. 86 Ill. Adm. Code 130.1935(c)(1).

If modified software is held for general or repeated sale or lease, it is canned software. 86 Ill. Adm. Code 130.1935(c)(2). 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. 86 Ill. Adm. Code 130.1935(c)(3). Computer software that is not custom software is considered to be canned computer software. See 86 Ill. Adm. Code 130.1935.

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 Assistance Division at 800-732-8866.

Very truly yours,

A handwritten signature in black ink, appearing to read 'GE', is written over a light gray rectangular background.

George L. Encarnacion, Jr.
Associate Counsel

GLE:sce