

If tangible personal property is transferred incident to sales of service, this will result in either Service Occupation tax liability or Use Tax liability for the serviceman depending upon his or her activities. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

March 2, 2010

Dear Xxxxx:

This letter is in response to your letter dated January 13, 2010 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:

We recently called your office and spoke with a representative in order to get a determination on assessment or non-assessment of sales tax for our business. Based on the description we provided of our business, we were told that we were exempt from charging sales tax.

This letter is being written so that we can receive a determination letter from your office in writing as to whether or not we need to assess sales tax.

Listed below is a description of the services that we provide to our clients.

**MAILING AND PRINTING OPERATIONS**

- Printing of bills, statements, notices, letters and other correspondence types, postcards, flyers and Inserts
- Data processing
- Record suppression and manipulation, conditional logic and address validation

**E-BILLING AND E-PAYMENT OPERATIONS:**

- Hosting and delivering bills electronically
- Electronic bill presentment (EBP)

- Electronic archival of bills, statements and correspondence
- Electronic bill presentment and payment (EBPP)

Upon your review of the services that we provide, we respectfully request that your office provide us with a written determination letter at your earliest opportunity.

Should you have any questions or require additional information, please do not hesitate to contact me.

## **DEPARTMENT'S RESPONSE:**

### **Mailing and Printing Operations:**

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.

Illinois Retailers' Occupation and Use Taxes do not apply to transactions that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For general information regarding sales of service and Service Occupation Tax, see 86 Ill. Adm. Code 140.101 through 140.109.

For your information, please refer to 86 Ill. Adm. Code 130.2000, which is the regulation for "Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers." As a general rule, when products are items of general utility and serve substantially the same function as stock or standard items, the products will be subject to the Retailers' Occupation Tax when sold. Items which serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price.

Items that would not be considered stock or standard items and could not be sold to someone other than the purchaser for substantially the same price would not be subject to the Retailers' Occupation Tax when sold, but would generally be subject to the Service Occupation Tax. Special order or custom print items are generally not considered stock or standard items and are generally not able to be sold to someone other than the purchaser for substantially the same price. Therefore special order or custom print items are generally subject to the Service Occupation Tax. The liability of servicemen in these transactions may result in either Service Occupation Tax liability or Use Tax liability for servicemen depending upon which tax base the servicemen choose to calculate their tax liability. Servicemen may calculate their tax base in one of four ways: 1) separately stated selling price of tangible personal property transferred incident to service; 2) 50% of the servicemen's entire bill; 3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or 4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act. Normally, most printers handle their liabilities under one of the de minimis methods.

Using the first method, servicemen 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. Under the second method, if servicemen do not wish to

separately state the selling price of the tangible personal property transferred, the servicemen must use 50% of the entire bill to service customers as the tax base. Both of the above stated methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for tax liability only applies to de minimis servicemen 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. Servicemen 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 servicemen's 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 servicemen 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. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property they purchase for transfer to service customers.

De minimis servicemen that are not otherwise required to be registered under the Retailers Occupation Tax Act may use the final method of determining tax liability. Servicemen 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 servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. These servicemen are not authorized to collect "tax" from their service customers nor are these servicemen liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction-by-transaction basis.

Generally, servicemen not engaged in this State in the business of making sales of service incur no Service Occupation Tax liability. However, the servicemen's customers may incur a Service Use Tax liability on the tangible personal property that is received in Illinois as an incident to purchases of service.

E-billing and e-payment operations:

Generally, information or data that is electronically transferred or downloaded is not considered the transfer of tangible personal property in this State. See 86 Ill. Adm. Code 130.2105(a)(3). However, sales of "canned" computer software are taxable retail sales in Illinois. Sales of canned software are taxable regardless of the means of delivery. For instance, the transfer or sale of canned computer software downloaded electronically would be taxable. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See subsection (c) of 86 Ill. Adm. Code 130.1935. Charges for updates of canned software are fully taxable pursuant to Section 130.1935. If the updates qualify as custom software under subsection (c) of Section 130.1935, they may not be taxable.

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,

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