

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.)

May 27, 2010

Dear Xxxxx:

This letter is in response to your email dated April 28, 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 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:

Company A, a Wisconsin corporation, is engaged in the business of collecting and furnishing healthcare information to requestors who wish to obtain copies of medical records as more fully described below, and in connection therewith, presents the following issues for which we request a determination:

1. Whether Company A's charges for services and the provision of medical records are subject to sales tax when distributed in the following formats
 - a. Printed copy?
 - b. Copy sent by fax?
 - c. Copy sent in a PDF document electronically via email?
2. Whether Company A is a dealer required to collect sales tax?
3. Whether taxable charges, if any, are limited to services and medical records distributed to customers within your state?
4. What is the proper application of state and local sales tax when the requesting party (such as an insurance Company A) has locations both in-state and out-of-state?

Petitioner submits the following facts as the basis for this request:

Company A enters into agreements with various physicians, hospitals and other healthcare facilities (collectively, "Healthcare Providers"). These agreements require Company A to respond on behalf of the Healthcare Providers to all requests for medical records, data, and information relating to particular patients (collectively, "Medical Records") that are made by or for patients, insurance companies, physicians, other health care providers, payers, attorneys, Federal and State organizations, and others (collectively, "Requesting Parties" and individually the "Requesting Party"). In turn, when Healthcare Providers receive requests for Medical Records, they are obligated to refer the Requesting Parties to Petitioner.

Depending upon the scope of services being provided to a particular Healthcare Provider, Company A may:

- Receive and review all incoming requests for Medical Records and validate authorizations for release of medical records from Requesting Parties for HIPAA and state law compliance and/or request follow up information as necessary to validate an invalid authorization. A request may be rejected if, for example, fulfillment would violate federal or state laws.
- Pull files and/or review electronic records and/or microfilm for Medical Records meeting the authorization request and either copy the Medical Records to paper, scan and upload records to Company A's Central Business Center (CBC) located at its corporate headquarters in Wisconsin, and then copy same to paper, or scan and upload to Company A's CBC and make the Medical Records available through its e-delivery system online for the Requesting Party to download via a confidential pass code and print.
- Log in and record pertinent information regarding the requests in the Company's web-based information request management application software system in order to provide a tracking of the status of the processing of the requests.
- Mail records and/or make the records available through Company's e-delivery system online.
- Invoice the Requestor for copies made in accordance with relevant state and federal regulations, and collect payment of the invoices.

Some of the above services may be performed by Company A's employees onsite at the local Healthcare Provider facility and some of the services may be provided from Company's corporate headquarters located in Wisconsin, again depending on the scope of services chosen by the particular Healthcare Provider. Typically, the pertinent Medical Records are identified and pulled by Company's employee onsite at the Healthcare Provider, where they are copied and/or scanned at the facility, and then either mailed or made available at the Healthcare Provider location or Company's headquarters. The billing and collections are done from Company's Wisconsin office. The fees collected from the Requesting Parties by Company are retained by Company as its primary compensation for performing the services for the Healthcare Provider, although there are instances where the Healthcare Provider may also pay compensation to the Company for its services.

The amount charged varies depending upon the Requesting Party, the quantity of medical records requested, and the type of information requested. Certain state and

federal law may limit the amount that may be charged to certain requestors, but not others. In addition, when a proper request is submitted to the Healthcare Provider by certain Requesting Parties, the Healthcare Provider is required by law to provide a copy of the records requested within a reasonable period of time and upon payment of the mandated charge.

Therefore, we kindly request your assistance in guiding us to the appropriate response to our inquiries above. If you have any questions, please feel free to contact one of the undersigned at the phone number and/or address provided below.

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. 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 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.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of services. The transactions you have described appear to be service transactions. Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. 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. 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 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 Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their 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. See 86 Ill. Adm.

Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be 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. See 86 Ill. Adm. Code 140.108.

Note, 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. Therefore, such viewing and/or downloading activity over the internet would not be subject to liability under the Retailers' Occupation Tax Act, Use Tax Act, Service Occupation Tax Act, or Service Use Tax Act. Please note, however, the transfer of any canned software (or update of canned software) is considered the transfer of tangible personal property and is fully taxable, regardless of the means of delivery. See 86 Ill. Adm. Code 130.1935(a). The transfer or sale of canned software downloaded electronically would be taxable.

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

Very truly yours,

Debra M. Boggess
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