

The Service Occupation Tax is a tax imposed upon servicemen engaged in the business of making sales of service in this State, based on the tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

August 3, 2010

Dear Xxxxx:

This letter is in response to your letter dated June 16, 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 are in need of your guidance regarding the attached tax matrix that we have created for one of our clients in the services industry. In summary, Client X provides their customers with whatever services their customers need (see variety on attachment), whether in an outsource situation or a temporary staffing situation. They are what we would call a job shop for service needs when a company lacks the equipment or staffing to complete an administrative type or project function.

If your state taxes staffing services, please also respond with the tax treatment for both supervised and unsupervised contracts. Client X may send in their person for the customer to direct or Client X may be hired to provide full management assistance and oversees the staffing. For the services listed, the assistance may occur at the customer site or Client X's office.

Please review the attached tax matrix for all listed categories and redline as needed. Please also provide us with the applicable statutory or regulation sites or publications/bulletins that will help support how your state taxes these services.

We really appreciate your assistance with this inquiry. In an effort to implement proper procedures yet for 2010, a response prior by July 31 would be greatly appreciated. Do

not hesitate to contact me with any questions or if you would like a copy of the matrix in electronic format to make your comments, revisions or enhancements.

## TAX MATRIX 2010

| Short Description  | IL  |
|--|-----|
| <b>ACCOUNT MANAGEMENT</b>  | NT  |
| <b>BINDING SERVICES</b>  | NT  |
| <b>COMPUTER SERVICES</b> (IT Services, Help Desk, Asset Management, Managing the computers, Back-up Activity)  | *9  |
| <b>COST RECOVERY</b>   | NT  |
| <b>DATA PROCESSING SERVICES</b>  | *9  |
| <b>DESKTOP PUBLISHING</b> (Excel files, Graphic Arts/Graphic Design/Wordprocessing)  | *9  |
| <b>DESIGN SERVICES</b> (same as Desktop Publishing)  | *9  |
| <b>EQUIPMENT RENTAL</b>  | *9c |
| <b>FAXING</b> (Must separately state supplies, equipment and labor)  | NT  |
| <b>GENERAL OFFICE SERVICES</b>   | NT  |
| <b>HOSPITALITY</b> (greeting people, setting up conference rooms, etc.)  | NT  |
| <b>MAIL</b> (manage mail room; sort, delivery, processing UPS, Fedx Labels, folding, enclosing, must separately state supplies, equipment and labor) | *9a |
| <b>MANAGEMENT FEES</b>   | NT  |
| <b>OVERTIME LABOR</b>  | NT  |
| <b>PRODUCT SALES</b>   | T   |
| <b>RECORDS MANAGEMENT</b> (maintaining paperwork, filings, HR filings)   | NT  |
| <b>REPRO</b> ( (Must separately state supplies, equipment and labor)   | NT  |
| <b>SCANNING</b> (Must separately state supplies, equipment and labor)  | NT  |
| <b>SHIPPING/DELIVERY FEES</b>  | *9a |
| <b>SUPPLY MANAGEMENT</b> (maintain office supplies, paper stocking, etc.)  | NT  |
| <b>TEMP STAFFING SERVICES</b>  | NT  |
| <b>TRAINING SERVICES</b>   | *9b |
| <b>TRAVEL EXPENSES</b>   | NT  |

#9 – If leads to a tangible product, such as a CD, the transaction becomes taxable, if separately state [sic] service, the service remains exempt. See Reg. 130.1935; \*9a – Shipping is exempt if separately stated and optional, if bundled entire transaction is taxable Reg. 130.415, if shipping is manatory [sic] than [sic] taxable. \*9b – Training is taxable however the manuals if given away are exempt, if sold, becomes taxable. 9c – Rental contract verbage [sic] determines taxability or if it is equipment that is leased to own.

### DEPARTMENT'S RESPONSE:

The Department cannot approve publications or documents other than those issued by the Department of Revenue. However, we hope the following information will provide sufficient guidance to answer your questions.

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.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service 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 your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

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 serviceman's entire bill; (3) Service Occupation Tax on the serviceman's cost price if the serviceman is a registered de minimis serviceman; or (4) Use Tax on the serviceman's cost price if the serviceman is a de minimis serviceman and is 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.

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, canned computer software is considered taxable tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. See 86 Ill. Adm. Code 130.1935. If the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See Section 130.1935(c). If transactions for the licensing of computer software meet all of the criteria provided in Section 130.1935(a)(1), neither the transfer of the software or the subsequent software updates will be subject to Retailers' Occupation Tax.

The provision of professional or consulting services that do not include the transfer of tangible personal property with the provision of such services does not result in Service Occupation Tax or Use Tax liability. The transfer of any tangible personal property such as, for example, written reports, tangible media (CDs) and training manuals incident to a sale of service would result in Service Occupation Tax liability or Use Tax liability. See 86 Ill. Adm. Code 140.01 *et seq.* In regards to workshops or training classes when tangible personal property may be transferred to participants, please see the Department's regulations on the taxation of seminar materials at 86 Ill. Adm. Code 140.129.

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if a lessor is guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction. Persons who purchase items for resale under conditional sales contracts can avoid paying tax to suppliers by providing certificates of resale that contain all the information set forth in 86 Ill. Adm. Code 130.1405. All receipts received by a lessor/retailer under a conditional sales contract are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010.

A true lease generally has no buy out provision at the close of the lease. If a buy-out provision does exist, it must be a fair market value buy-out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property.

The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability. As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Under Illinois law, lessors may not “pass through” their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where the lessees agree to reimburse the lessors for the amount of the tax paid, then the lessees are obligated to fulfill the terms of the private contractual agreements.

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,

Richard S. Wolters  
Associate Counsel

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