

If no tangible personal property is transferred to the customer, then no Illinois Retailers' Occupation Tax or Service Occupation Tax would apply. See 86 Ill. Adm. Code Parts 130 and 140. (This is a GIL.)

August 10, 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 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:

On behalf of our client, we are requesting a written private letter ruling from the State of Illinois with respect to the treatment of certain services for the purposes of applying Illinois' retailer's [sic] occupation tax ('ROT')/service occupation tax ('SOT') and/or telecommunications excise tax statutes and regulations. Included is a power of attorney form authorizing us to discuss this matter on behalf of the CLIENT.

Facts

1. CLIENT provides an advertising service to car dealerships (hereafter 'Retailers'), whereby the company collects and analyzes certain information regarding prospective customers, measured ad performance and evaluates employee call handling skills (herein referred to as 'Call Tracking').
2. CLIENT has Retailers located within the state of Illinois that purchase the various Call Tracking services.
3. Even though CLIENT is the party legally providing the Call Tracking service, it has engaged a third-party call measurement, monitoring and tracking service provider (herein referred to as 'Company B') as a sub-contractor to provide the Call Tracking services on its behalf.

4. Company B is headquartered in STATE2 but has a call center located in STATE.
5. To facilitate the call tracking and measurement services, Company B arranges for one or more customer vanity numbers (1-8YY numbers which can be customized (e.g., '800-RET-AILR') to be used by the customers of CLIENT (i.e., used by the Retailers). The number of toll-free numbers that are used by a Retailer is determined by the Retailer when the Retailer contracts with CLIENT for a particular Call Tracking package (i.e., various packages include the use of 1 to 10 toll-free numbers). If the Retailer wants any of the numbers to have custom digits (i.e., custom vanity numbers), the Retailer has the right to request the desired number contingent on that number being available. The toll-free numbers are used in advertisements on CLIENT's website, or on the Retailer's website and under certain premium plans. The toll-free numbers can also be used in advertising medium of the Retailer's choice (e.g., placed in the newspaper, radio, TV ads, etc.).
6. All vanity numbers ring directly to Company B's call center located in STATE. They do NOT ring directly to the Retailer's location, nor does the Retailer have any other use of the toll-free number (e.g., for outgoing calls, etc.).
7. Company B is the 'Customer of Record' for any numbers used, and maintains exclusive rights to any such number(s) beyond the term of the agreement with CLIENT and/or the Retailer.
8. The telecommunications providers bill Company B for the toll-free numbers consumed in the delivery of its call monitoring, measurement and tracking services.
9. Per the agreement with Company B, all applicable federal, state and local sales and use taxes are included in the telecommunication service provider's invoice to Company B and paid by Company B on the services it consumes. No federal, state or local sales and use taxes are charged to CLIENT by Company B.
10. When a potential customer or Retailer dials the toll-free number, the call is connected to Company B's servers located in STATE. Company B's servers pick up the call and play a 'Welcome' message and the server makes a second call dialed to the 'point to number' at the Retailer. The second call is transparent to Retailer's customer.
11. The 'point to number' is the Retailers [sic] own separate pre-existing or dedicated local telephone number, where the toll-free number, necessary for the call tracking services, is forwarded to and rings at the Retailer's location.
12. The Retailer is the 'Customer of Record' for the local telephone number(s) used as part of the call tracking service.
13. The local telecommunications provider bills the Retailer for this local service in Illinois if the Retailer is located within the state of Illinois, which should include all applicable federal, state and local sales and use taxes.

14. A salesperson at Retailer answers the phone and a recording is played indicating who is on the line, where the customer obtained the toll-free number and asking if the salesperson wishes to be connected to the customer. If prompted, the salesperson is then connected to the customer. Company B's servers are still participating in and recording the call. Company B's servers also provide the information obtained from/about the customer to Retailer via the internet. The salesperson at the Retailer has access to all of this information during the call.
15. Once the Retailer is done talking to the customer, the customer has the option to take a survey. If the customer chooses, Company B's servers take over asking the customer to take a survey. Once the customer hangs up, the call comes to an end.
16. The Retailer has access to a report via the internet that contains the detailed information for each of these calls – including a link to a recording of the call. Under certain plans, the Retailer can also create reports to determine which advertisements were most effective based on the number of calls using the toll-free number assigned to that advertisement. CLIENT also receives a report summarizing the Retailer's phone referral reports and usage data for each toll-free number.
17. CLIENT charges a flat subscriber fee for the call tracking service to the Retailer. The flat fee ranges from \$99 per month for the basic service which includes the use of and tracking on one toll-free number to \$499 per month for the premium service which includes the use of and tracking of ten toll-free numbers.
18. The agreements for the various Call Tracking services provided by CLIENT to its customers are attached as Attachments 1, 2 and 3.
19. A copy of the Dealer Brochure referenced in the agreements for the Call Tracking services is also attached.
20. To the best of the taxpayer's knowledge, the Department has not previously ruled on this issue for this taxpayer or a similar issue for any other taxpayer in the form of a named letter ruling. The Department did issue a GIL dated March 24, 2009 to FIRM; however, the GIL was incomplete because of missing information needed to make a determination.
21. Taxpayer is not involved with an audit or litigation with the Department.

Issue

Are the 'call tracking' services sold by CLIENT to Retailers located within the state of Illinois subject to Illinois ROT, SOT and/or the telecommunications excise tax?

Conclusion

The sale of call tracking services from CLIENT to Retailer is a sale of nontaxable services with no transfer of tangible personal property. It is unclear if CLIENT is selling telecommunications services to Retailers which would be subject to the telecommunications excise tax. CLIENT includes in its Call Tracking service fee the use of 1-800 numbers to be used by the Retailers; however, the Call Tracking service

seems to be closer to a data processing or informational service which is excluded from the definition of gross charges subject to telecommunications tax.

Law

The relevant authorities are quoted below.

Sales and Use Tax

Illinois ROT is imposed on persons engaged in the business of selling tangible personal property ('TPP') at retail. Ill. Rev. Stat. ch. 35 para 120/2. The SOT is imposed on persons engaged in the business of making sales of services. The SOT is imposed on all TPP transferred as an incident of the sale of service; the service itself is not taxable. Ill. Rev. Stat. ch. 35 paras 115/1, 115/3.

Information Services

Information or data that is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, does not constitute the transfer of TPP; these types of transactions represent the transfer of intangibles and are thus not subject to ROT. Ill. Reg. § 130.2105. If such information was transferred in a tangible format, the transfer would be taxable under the ROT or SOT, depending on whether the item is customized. General Information Letter ST 02-0105-GIL, Illinois Department of Revenue, May 3, 2002.

In Private Letter Ruling ST 04-0013, Oct. 27, 2004, the Department ruled that a company that sold web-based information services to clients was nontaxable. The taxpayer was in the business of providing electronic financial information through a database accessed through the Internet. No software or other TPP was transferred to its customers. The Department found that because TPP was not transferred the taxpayer would not be subject to the ROT or SOT on the downloads or database information service.

Telecommunication Services

The Telecommunications Excise Tax is imposed on the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at a rate of 7% of the gross charges for such telecommunications services. Ill. Reg. § 495.140(a). 'Gross charges' means the amount paid for the act or privilege of originating or receiving telecommunications in Illinois and for all services and equipment provided in connection with providing telecommunications by a retailer. Ill. Reg. § 495.100(a). The term does not include charges for the storage of data or information for subsequent retrieval or charges for the processing of data or information intended to change its form or content. In addition, charges for automated data storage, retrieval and processing services or for the use of computer time or other equipment are not included in gross charges. Automated information retrieval or data processing charges are not included in gross charges as well. Ill. Reg. § 495.100(c).

Analysis

Based on the foregoing, we respectfully request a determination that the call tracking services are not subject to Illinois ROT, SOT or the telecommunications excise tax.

CLIENT provides call tracking services to Retailers. This service allows Retailers to monitor, record, and view real time information about prospective customers, measure the results of the advertising initiative, and collect prospective customer data relative to the referrals. The information provided in this service, like data processing and information services, is individual to each Retailer; customers are referred to one Retailer based on certain criteria (e.g., location of customer, etc.).

The information gathered from that referral is then recorded and reported to that specific Retailer and is not provided to any other Retailer; the information gathered cannot be shared or sold to any other party or be made generally available. The Retailer pays for the data and it is exclusive to the Retailer; CLIENT cannot resell the information to any other Retailer or incorporate that information into another report furnished to a different Retailer. The information provided is in the intangible form and TPP is not transferred in the transaction. It presents similar facts to General Information Letter 02-0105 whereby the Department held that the information services and electronic downloads of information were not subject to the Illinois ROT or SOT.

Furthermore, Retailer is not only purchasing the use of 1-800 numbers, it is purchasing the tracking and reporting capability of that specific number. The primary purpose for Retailer to procure the call tracking services from CLIENT is to obtain information regarding prospective customers, not the use of the line. The fact that CLIENT charges Retailer a subscription fee rather than a telecommunications or line charge further supports the position the information or other services and not telecommunications services are being sold. The fee for the use of the 1-800 numbers is included in the fee for the tracking and reporting service. Illinois specifically excludes data processing and information services from the definition of 'gross charges' for purposes of the telecommunications excise tax. The call tracking service should be deemed to be either an information service or data processing service as CLIENT is manipulating information furnished by the caller to the Retailer through a series of operations involving an interaction of processes, methods, personnel and computers, which is then transferred electronically to the Retailer.

As such, CLIENT is providing nontaxable information services or some other nontaxable data processing services to the Retailers. Information services are not subject to tax nor are the electronic downloads, as they are deemed to be intangible property. Further, CLIENT is not providing a telecommunications service as they are charging a subscription fee and the true object of the transaction is the call tracking service and the electronic download, which are specifically not subject to the Illinois ROT or SOT.

If you have any questions regarding this request or require additional information, please contact me.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Based on the limited information you provided in your letter, the Department is unable to give you a binding determination regarding the taxability of the transactions about which you inquired. As a result, the Department has decided not to issue a PLR and issue this GIL instead.

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 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 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax. Services that involve the transfer of tangible personal property (such as, for example, written reports, other tangible media and training manuals) incident to a sale of service may be subject to either Service Occupation Tax liability or Use Tax liability. Please note, however, 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). Based on the above, therefore, if no tangible personal property is transferred, then there would be no retailers' occupation tax or use tax liability.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 35 ILCS Sections 630/3 and 630/4. Telecommunications retailers collect tax from end users and remit it to the Department. See 86 Ill. Adm. Code 495.140. Retailers of telecommunications are persons who engage in the business of making sales of telecommunications at retail. 86 Ill. Adm. Code 495.110. Thus, if a provider of services uses telecommunications, such as 1-800 numbers, and does not resell those 1-800 numbers to its customers, then it would not be making sales of telecommunications. Rather, it would be the end user of those telecommunications and would owe telecommunications excise tax to the supplier of those telecommunications. For example, Company A obtains 1-800 numbers from the telephone company and remits telecommunications excise tax on those purchases. Company A receives calls on those 1-800 numbers and then connects the 1-800 calls to Company B via Company B's separate telephone number. In that scenario, Company A is generally considered the end user of the 1-800 telecommunications service and, therefore, would owe telecommunications excise tax to the telephone company from whom it received the telecommunications services (i.e., the 1-800 numbers).

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
Associate Counsel

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