

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.)

December 14, 2010

Dear Xxxxx:

This letter is in response to your letter dated October 14, 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:

I am the owner of a company based in CITY, IL called ABC. We market and service an online employability assessment tool called the XYZ. The XYZ is owned and operated by COMPANY based out of COUNTRY. In most instances all US based licensees contract to use the XYZ service directly with COMPANY. I earn my commissions and service fees directly from COMPANY as an independent contractor, and as a sole proprietor, report all earnings as personal income.

Recently, a potential customer located in Minnesota asked if they could contract for the XYZ through my firm instead of the COUNTRY owner of the tool. If we were to do this the ABC would invoice the company in Minnesota for fees to use the XYZ service. All payments to the ABC, minus a \$50 admin fee, would be then sent to COMPANY. So the ABC would serve as a reseller of a COUNTRY online service to a firm in Minnesota. No tangible property is transferred or exchanged. The buyer would access the service strictly via the internet.

I am requesting a written opinion as to the tax liability for the ABC in such a sale. I have had verbal confirmation from the Illinois Department of Revenue that this is a \$0 tax transaction, but I need a written opinion before I make such a sale.

Please let me know if you have any questions.

## DEPARTMENT'S RESPONSE:

Although we cannot give you a specific answer in the form of a General Information Letter, we hope you find the following helpful.

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 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. If no tangible personal property is transferred incident to sales, then neither Service Occupation Tax or Use Tax liability is incurred.

Please note that 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 (prewritten) 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.

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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