

If no tangible personal property is transferred to customers, then no Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax Act, or Service Use Tax liability would be incurred on the sales to those customers. See 86 Ill. Adm. Code 130.301. (This is a GIL.)

June 30, 2011

Dear Xxxxx:

This letter is in response to your letter dated June 6, 2011, 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:

COMPANY is a retailer of dental supplies and equipment with nexus in your state.

I would like a determination of the taxability of these items.

We sell the ABC line of informational DVD presentations used to help a dentist explain a particular procedure to their patients. ABC is coming out with a new product line for which the presentations will be hosted by COMPANY as a cloud based streaming video service.

The service will be sold to a dental practice, with the price based on the number of simultaneous connections allowed. The dentist's patients will view the presentation at the dentist's office. There will not be a way to save or copy the presentation; they will only be able to be viewed as streaming video.

We are requesting a ruling on exactly how this product should be defined. Is this simply streaming video similar to renting a movie, is it an online information service or is it an online training class.

Based on the answer to that question, is this product considered taxable in your state at either the full or a special rate.

If there are any questions please contact me.

**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. Items such as VHS tapes, DVDs, CDs and CD-ROMs, with or without content, are subject to Retailers' Occupation Tax.

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.

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). Custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See Section 130.1935(c)(3).

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.

In general, if a company provides access to a database of information and does not transfer any software or other tangible personal property to its customers, the company would not incur Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax liability.

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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