

This letter concerns the taxation of computer software transactions. See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

September 11, 2013

Dear Xxxxx:

This letter is in response to your letter dated November 27, 2012, 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:

I am trying to determine whether our firm’s service is subject to sales tax in Illinois. COMPANY is the developer and owner of service that collects, processes, formats stores and distributes information (“Service”) at facilities (“Client”). Clients can only access the information through our website, for which they are charged a monthly or quarterly access fee. There is no software that is downloaded or copied to a disk for backup purposes. Nor is this a license. The term “Software as Service” is frequently used to describe our product. The vast majority of our Clients use the Service as it has been originally set up, however a handful of Clients have requested customized features to be added that only they can use. When we do a customized set up there is a separate invoice that is issued apart from the access fee.

If you should need additional information or have questions, please do not hesitate to 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. 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.

Your letter appears to inquire regarding computer software Application Service Providers (ASP's), software hosting, and web-based software. The Department believes that the proper forum for providing guidance regarding transactions involving computer software ASP's, software hosting, and web-based software is through a formal administrative rulemaking process rather than through individual inquires such as letter ruling requests. The Department at present is in the process of researching the nature and type of services and products provided by these types of providers, including discussions with industry participants. The Department has found, based on the discussions to date and previous letters received by the Department, that the manner in which these services or products are provided can vary greatly.

When the Department has completed its review of these products or services, it intends to propose regulations for adoption. Until that time, these types of providers will have to determine, based on the definition contained in Section 2-25 of the Retailers' Occupation Tax Act (35 ILCS 120/2-25), whether the products they sell or lease are "computer software."

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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