

ST 15-0012-GIL 01/30/2015 SERVICE OCCUPATION TAX

Under the Service Occupation Tax, servicemen are taxed on tangible personal property transferred incident to a sale of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

January 30, 2015

Dear Xxxx:

This letter is in response to your letter dated July 24, 2014, 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:

This letter requests a letter ruling regarding several fact scenarios related to the activities of a business which assists hospitals in providing copies of medical records to third parties.

COMPANY, a [STATE 1] based corporation, contracts with medical facilities throughout the United States to provide a service related to the release of medical record information to third parties, such as law firms or insurance companies (the Record Recipient). COMPANY utilizes an online Internet-based system. The steps in the process are described below.)

- 1) The medical facility logs a medical record request into the online system.
- 2) The medical facility staff makes an electronic image of the medical record information by either scanning paper documents onto the system or by importing electronic information into the online system. All medical information is stored in image format (TIF). COMPANY does not own or have any legal right to the medical records.
- 3) COMPANY provides the medical record information to the Record Recipient using either paper or a CD, or it transmits the record electronically. If the information is provided on paper or a CD, COMPANY mails the requested record from its [CITY,STATE 1], processing center.
- 4) COMPANY, acting as agent for the medical facility, invoices the Record Recipient.
- 5) In some instances, COMPANY remits a percentage of the fee to the medical facility

and COMPANY charges each medical facility a flat monthly service fee.

- 6) In other instances, COMPANY retains all of the fees collected and COMPANY does not charge the medical facility a monthly service fee.

COMPANY provides the internet-based system to the medical facilities and in the state of Illinois provides its own staff at the medical facilities.

The questions we are presenting are as follows:

- 1) An Illinois medical facility contracts with COMPANY to provide copies of records as requested. A Record Recipient located in Illinois requests a medical record. COMPANY provides the copy and invoices the Record Recipient the Illinois statutory fee. Is the fee subject to Illinois sales tax?
- 2) An out-of-state medical facility contracts with COMPANY to provide copies of medical records as requested. A Record Recipient located in Illinois requests the record, and COMPANY invoices the Record Recipient the fee mandated by that state. Is that fee subject to Illinois sales tax?
- 3) An Illinois medical facility contracts with COMPANY to provide copies of medical records as requested. A Record Recipient who is located outside Illinois requests a medical record. COMPANY provides the copy and invoices the Record Recipient the Illinois statutory fee. Is the fee subject to Illinois sales tax?

Thank you for your assistance.

DEPARTMENT'S RESPONSE:

Without examining the way that these transactions are invoiced between the various parties, we are unable to determine which parties may have tax liability based on the scenarios you have posed. We also cannot determine whether you are engaged in a multi-service situation. Please refer to 86 Ill. Adm. Code 140.145 for the rules regarding multi-service transactions. Though we are unable to provide you with a specific answer based on the limited information contained in your letter, we hope you will find the following information 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.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of services. The transactions you have described appear to be service transactions. 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 de minimis 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 do not 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.

Please note, the Department does not consider the viewing, downloading or electronically transmitting of video, text and other data over the internet to be the transfer of tangible personal property. However, if a company provides services that are accompanied with the transfer of tangible personal property (e.g., medical records delivered to a customer in a hardcopy version, rather than sent electronically), such service transactions are generally subject to tax liability under one of the four methods set forth above. In your letter, you ask about the taxability of fees. We are not clear on exactly what type of fees you are referring to, but the taxability of certain fees, such as the one that you mention in your letter, may depend on which method you utilize to determine your tax liability. Please note that a serviceman does not incur Service Occupation Tax liability on property which he resells as an incident to a sale of service under an agreement by which the serviceman is obligated to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to a point within this State, provided that such delivery is actually made. Such sales are deemed to fall within the protection of the Commerce Clause of the United States Constitution. See 86 Ill. Adm. Code 140.501(b).

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,

Cara Bishop
Associate Counsel

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