

ST 15-0015 GIL 03/16/2015 SALE OF SERVICE

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.)

March 16, 2015

Dear XXXX:

This letter is in response to your letter dated December 3, 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:

My question is in reference to the taxability of Service as a Software (SaaS) or cloud computing.

We are a manufacturer of commercial HVAC equipment, and will be selling a new product line that consists of two elements: hardware and software as a service. Please see the product facts listed below:

- The solution provided by COMPANY provides facility and equipment management, monitoring, control, analysis, and decision-making via a secure, cloud-communicating machine-to-machine gateway that captures, analyzes and delivers building and equipment information, and third party content, to a user device via wireless or local area network connection.
- solution consists of two elements: the hardware component on each unit necessary to deliver power and other data to the cloud, and the Software as a Service subscription necessary for retrieving that information from the cloud.

- Hardware is available installed onto new equipment from the factory, and included in the equipment cost at the time of billing. For existing units, hardware can be purchased as a retrofit kit, and installed by a third party service provider, or potentially COMPANY.
- Software as a Service is sold as a subscription package. Cost of cellular access is included in the subscription.
- COMPANY will provide customer support, and will maintain software capability located in STATE 1. The customer will not download software onto their network, and will access data by cloud only. No customer involvement in updating software, as all will be handled by COMPANY.

As a registered taxpayer in STATE 2, we are requesting guidance on determining the taxability of four possible transaction scenarios.

1. Customer purchases hardware as a retrofit kit (installed by a third party hired by the customer), and a 12 month subscription to access data online. All items are separately stated on the invoice.
2. Customer purchases hardware as a retrofit kit (installed by COMPANY), and a 12 month subscription to access data online. All items are separately stated on the invoice.
3. Customer purchases a 12 month subscription service only.
4. Customer (a third party rep) purchases the hardware retrofit kit and subscription service, and will resale to the end user. The customer provides a valid STATE 2 resale certificate.

Please contact me at the mailing address, phone number and email address listed below with any questions. Thank you for your assistance.

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 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. See 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.

When an Illinois retailer sells tangible personal property and delivers it in Illinois, sales tax is due unless an exemption can be documented. The resale exemption is applicable when making purchases of tangible personal property that the purchaser intends to in turn sell. For general information regarding resale certificates, the

Department's regulation entitled "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale," is found at 86 Ill. Adm. Code 130.1405.

Retailers' Occupation and Use Taxes do not apply to sales of service. Some of the transactions you have described appear to be service transactions (for example, a subscription to access data online). 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.

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, such service transactions are generally subject to tax liability under one of the four methods set forth above.

The Department is currently evaluating the taxability of Software as a Service (SaaS), cloud computing, computer software Application Service Providers (ASPs) and similar types of transactions. The Department has found that there is no universal agreement regarding the nature of these transactions. When the Department makes a determination regarding the taxability of these transactions, that determination will operate prospectively only.

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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