

ST 15-0016-GIL 03/16/2015 USE TAX

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. (This is a GIL.)

March 16, 2015

Dear XXXX:

This letter is in response to your letter dated October 25, 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](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 writing to you per the referral of Gretel in the Illinois Department of Revenue’s Legal Services Bureau.

COMPANY Technology Group Inc. (COMPANY), a [CITY, COUNTRY] corporation is seeking a private letter ruling on sales tax payments. COMPANY is a “cloud” web hosting company and operates servers in various international geographic locations for optimal connectivity and redundancy. We were recently informed by our leasing company that we were required to pay sales tax on servers being purchased in STATE and shipped to a third party datacenter in [CITY, Illinois] where we pay for connectivity.

We are not collecting revenue from people residing in Illinois and are reselling the servers (“software as a service” model) to our clients (outside of Illinois). This really affects our business model, as this is not the case

in other states we have servers. We are in a very competitive international market where the markup is less than 10% in some cases.

Because of the low markup in this market, if we are in fact not exempt, then we will not be able to put additional servers in Illinois in the future. I imagine that this would hurt the local Illinois economy more so than it would with us being there and having a sales tax exemption, which does not make sense to me. I hope that you will find a way for exemption from the sales tax for our future purchase of servers for use in Illinois-based data centers.

## **DEPARTMENT'S RESPONSE:**

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Because your request for a Private Letter Ruling (PLR) does not meet the Department's criteria set forth in its regulation governing PLRs, the Department decided that it would decline to issue a PLR in response to your request. We hope, however, the following General Information Letter will be helpful in addressing your question.

### Sales Tax

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. The Department considers the servers you reference in your letter as tangible personal property subject to tax.

### Multi-State Taxation

In order to prevent actual or likely multi-state taxation, however, the Use Tax does not apply to the use of tangible personal property in this State that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310.

### Leases

For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax. Persons who purchase items for resale under conditional sales contracts can avoid paying tax to suppliers by providing certificates of resale that contain all the information set forth in 86 Ill. Adm. Code 130.1405. All receipts received by a lessor/retailer under a conditional sales contract are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010.

In contrast, a true lease generally has no buy out provision at the close of the lease. If a buyout provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

We cannot determine the exact nature of your company's leasing situation without examining the leases and contracts involved. However, if the lease is a true lease, the lessor incurs Use Tax on the cost price of the property located in Illinois.

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,

Debra M. Boggess  
Associate Counsel

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