

ST 18-0025-GIL 09/13/2018 SALE AT RETAIL

Sales of intangible personal property are not taxable under the Retailers' Occupation Tax Act. 86 Ill. Adm. Code 130.120. (This is a GIL.)

September 13, 2018

Dear Xxxxx:

This letter is in response to your letter dated March 8, 2018, in which you requested 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:

Our Limited Liability Company, COMPANY, recently communicated with the Illinois Department of Revenue Central Registration Division in an effort to determine whether our business model and endeavors would require the necessity of applying for an Illinois business license. After outlining our business model to the Department of Revenue Central Registration Division, I was advised to contact your office and request and obtain a legally binding advisory opinion regarding the proper classification of our business and any subsequent Illinois tax responsibility.

Our company is duly licensed in the State of STATE as A [sic] limited liability company, doing business in the State of Illinois. Our business model is to create a clean energy crypto currency mining facility, or datacenter, in the Northern region of Illinois. We are working in partnership with local non-profit and for-profit organizations on the overall engineering and design of our facility and clean energy micro grid that will be created to facilitate the high energy demand of our datacenter. The project will be partially publicly funded through the sale of utility tokens (smart contracts) via block-chain technology. This process is commonly known as an ICO (Initial Coin Offering).

Unlike many traditional ICO, where the token being sold is to act as a currency or company share, we are selling a smart contract (tokens) that represent a tangible

product. This type of blockchain token has become commonly known as a Utility Token. A portion of COMPANY's products, deemed "Mining Hardware", will be sold to our customers via the aforementioned smart-contracts. Each individual's ownership of the mining hardware will be represented by their respective holding of a token (smart contract). The mining hardware will be divided into a predetermined number of utility tokens with each token representing an equal percentage of the total mining hardware. No additional tokens will ever be created or minted. The number of tokens representing the mining hardware will remain static indefinitely.

The smart contract that a person holds represents their physical ownership of the mining hardware that our company will manage and operate on their behalf as services rendered. Any profits generated by an individual's mining hardware (represented by the number of tokens that person holds) will be returned to that individual in crypto currency on a preset schedule. In addition, since the smart contract tokens that COMPANY will be using which represents an individual's ownership of a physical asset will be deemed a utility token, the tokens will never be listed on any crypto currency exchanges. However, the individual owner and holder of a utility token will retain the right to sell their hardware at any time.

Since every utility token sold by COMPANY to our customers during our initial funding phase represents a contract that the individual will own as a portion of the mining hardware that our company will manage and operate on their behalf, it is our understanding that any such transactions represent the resale of a good. Accordingly, it is our belief after conferring with legal counsel that an Illinois business license would be required, and that appropriate sale or use tax would be due to the State of Illinois for any customer transactions that occur within the State of Illinois.

In summary, with our business model the only difference between a customer coming and purchasing physical hardware from our location and taking it home to use for crypto currency mining is that once they purchase it from us we will provide the service of managing and operating it. The individual will never need to take physical possession of their hardware but will retain the right to do so at a later time. We believe the sale of our utility token, a smart contract, which represents the customer's individual ownership of the mining hardware, is no different than selling a customer hardware that they would physical [sic] take possession.

We also understand that the emergence of blockchain technology, crypto currency, and utility tokens/smart contracts has created a whole new set of challenges for regulatory bodies within the United States. New and unique business models such as ours have yet to be fully understood, evaluated, and/or have legal precedent and standards of operations set by the appropriate regulatory and governmental bodies. In addition to the business objectives I have set forth herein, our goal is to conduct business in a professional manner and in accord with the laws of the State of Illinois.

Please respond at your earliest convenience. Thank you in advance for your anticipated courtesy and cooperation in this manner.

DEPARTMENT'S RESPONSE:

See the Department's regulation at 86 Ill. Adm. Code 130.120 that states that intangible personal property is not subject to tax. Sales of the tokens described in your letter are sales of intangible personal property. Since the Illinois sales tax laws are triggered upon the transfer of tangible personal property, no sales tax liability attaches to the sale of those tokens.

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

DMB:bkI