ST 18-0037-GIL 12/05/2018 TELECOMMUNICATIONS

This letter discusses audio conferencing services. See 35 ILCS 630. (This is a GIL.)

December 5, 2018

Dear Xxxx

This letter is in response to your letter received September 25, 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:

COMPANY supplies tax compliance software to the telecommunication industry.

OVERVIEW

We are currently researching the taxability of Web Conferencing which includes as a major component a web-based "Cloud Collaboration Service" that provides participants of a video conference meeting with various enhanced features such as screen sharing.

It is our understanding that such a "Cloud Collaboration Service" basically consists of a desktop software application that resides on the vendor's server & is thus accessed remotely.

It is our further understanding that such a "Cloud Collaboration Service" can be subscribed to on either a stand-alone basis or bundled together with an audio conference bridging service component which the desktop application is layered upon.

Please note that in the absence of purchasing the audio bridging service plug-in component, a corporate subscriber must make arrangements with their own telecommunications supplier in order to integrate audio conferencing capability in conjunction with the desktop features.

Fact Pattern

COMPANY sells the following product offerings:

- Stand-alone Cloud Collaboration Service [Product A] = $$$ Per Month
- Audio Conference Bridging Service Add-On [Product B] = $$$ Per Month
- Bundled Package [Product C] = $$$ Per Month

QUESTIONS

Based on the above we have the following questions:

1. Are charges for the stand-alone Cloud Collaboration Service (Product A) provided independently of the Audio Conference Bridging Service add-on subject to the Illinois Telecommunications Excise Tax and the Telecommunications Infrastructure Maintenance fee?
2. If yes, what is the basis of such taxability status? (Examples: Product A is taxable as a standard telecommunication service, taxable as remote access to canned software, etc.)
3. Are charges for the Audio Conference Bridging Service add-on (Product B) subject to the Illinois Telecommunications Excise Tax and the Telecommunications Infrastructure Maintenance fee when stated separately on the subscriber's invoice?
4. What is the taxability status of the bundled service offering (i.e., Product C)?

DEPARTMENT'S RESPONSE:

Computer Software

"'Computer software' means a set of statements, data, or instructions to be used directly or indirectly in a computer in order to bring about a certain result in any form in which those statements, data, or instructions may be embodied, transmitted, or fixed, by any method now known or hereafter developed, regardless of whether the statements, data, or instructions are capable of being perceived by or communicated to humans, and includes prewritten or canned software." 35 ILCS 120/2-25. Generally, sales of "canned" computer software are taxable retail sales in Illinois. Canned computer software is considered to be tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means, or other media. 86 Ill. Adm. Code 130.1935. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. Custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See 86 Ill. Adm. Code 130.1935(c)(3). Computer software that is not custom software is considered to be canned computer software.

If transactions for the licensing of computer software meet all of the criteria provided in subsection (a)(1) of Section 130.1935, neither the transfer of the software nor the subsequent software updates will be subject to Retailers' Occupation Tax. A license of software is not a taxable retail sale if:

A) It is evidenced by a written agreement signed by the licensor and the customer;

B) It restricts the customer's duplication and use of the software;

C) It prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;

D) The licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and

E) The customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.

If a license of canned computer software does not meet all the criteria the software is taxable.

In order to comply with the requirements as set out in Section 130.1935(a)(1), there must be a written "signed" agreement. A license agreement in which the customer electronically accepts the terms by clicking "I agree" does not comply with the requirement of a written agreement signed by the licensor and customer. The Department previously held that an electronic signature did not comply with the requirement of Section 130.1935(a)(1)(A) that the license be evidenced by a written agreement signed by the licensor and the customer. ST 06-0005-PLR (December 16, 2006). In ST 18-0003-PLR (February 8, 2018), the Department decided that an electronic license agreement in which the customer accepts the license by means of a signature in electronic form that is attached to or is part of the license, is verifiable, and can be authenticated will comply with the requirement of a written agreement signed by the licensor and customer. See ST 18-0010-PLR (September 26, 2018) for examples of acceptable written signatures. A license agreement in which the customer electronically accepts the terms by clicking "I agree" remains unacceptable.

Currently, computer software provided through a cloud-based delivery system – a system in which computer software is never downloaded onto a client's computer and is only accessed remotely – is not subject to tax.

Computer software is defined broadly in the Retailers' Occupation Tax Act. If a provider of a service provides to the subscriber an API, applet, desktop agent, or a remote access agent to enable the subscriber to access the provider's network and services, the subscriber is receiving computer software. Although there may not be a separate charge to the subscriber for the computer software, it is nonetheless subject to tax, unless the transfer qualifies as a non-taxable license of computer software.

Telecommunications

The Illinois Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons. 35 ILCS 630/3 and 4. The Simplified Municipal Telecommunications Tax Act allows municipalities to impose a tax on the

act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by persons in Illinois at a rate not to exceed 6% for municipalities with a population of less than 500,000, and at a rate not to exceed 7% for municipalities with a population of 500,000 or more, of the gross charges for such telecommunications purchased at retail from retailers by such persons. 35 ILCS 636/5-10 and 5-15.

The Act defines gross charges as including the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer. 35 ILCS 630/2(a). The Act does exclude charges for customer equipment, including equipment that is leased or rented by the customer from any source, when those charges are disaggregated and separately identified from other charges. 35 ILCS 630/2(a)(4).

The gross charges for audio conferencing bridging services that include the reselling of telephone services are subject to the Telecommunications Excise Tax Act. When teleconferencing providers are reselling telephone services, they can provide resale certificates to the telephone service providers.

Generally, persons that provide conference services and who do not, as part of that service, charge customers for the line or other transmission charges that are used to obtain these services are not considered to be telecommunications retailers from these activities. Consequently, a company that provides audio conference services may pay its telecommunications provider the tax for telecommunications services it uses to provide the services. If, however, the company separately charges customers for the line or other transmission charges, they should provide their telecommunications providers with Certificates of Resale and should themselves collect and remit tax.

Some companies now are providing web-based audio conference services. Generally, web-based services are not subject to Telecommunications Excise Tax, and a person providing the web-based services is the consumer of any telecommunications services it purchases and uses to provide the web-based services. See ST 13-0048-GIL. Teleconference services may also be classified as value-added services in some cases and not subject to tax. See ST 15-0001-PLR.

If the Company is providing taxable audio conferencing bridging services, the Cloud Collaboration Services would not be taxable if those charges are disaggregated and separately identified from the taxable audio conferencing bridging services.

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,

Richard S. Wolters
Associate Counsel

RSW:bkl