

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. See 86 Ill. Adm. Code 130.101 and 150.101. (This is a GIL.)

February 27, 2019

Dear Xxxxx:

This letter is in response to your letter received January 25, 2019, 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:

My name is NAME, and I am in need of legal ruling on whether I have any nexus relation to your state. I have already contacted your customer service department, and was recommended to mail you for something official. Specifically, I sell digital art files [sic] that are only transferred electronically. I need to know how Title 86 Part 130 Section 130.2000 and Title 86 Part 130 Section 130.2105 would apply to me. I want to know if what I sell is considered tangible in Illinois, and if I have any responsibilities toward the state whatsoever. The following is a description of my business.

My Business Description

I have a very small business I run from my home in STATE. My Business only has a physical tie to my home in STATE. I have no physical nexus in any other state. I am a graphic designer that sells simple pieces of art in a digital format via the marketplace BUSINESS. I only sell on the marketplace BUSINESS. I do not ship anything physical. All of my digital files are downloaded electronically by my clients as files like (pdf's, svg's, dxf's, etc). My clients are free to use the art for personal use in any way they like. Typically this means printing it and ironing it on a shirt, mug, frame, etc. I am also considering allowing them to use the digital file for printing the art on up to 100 items for commercial use. (Although, I would likely remove this if it would be the difference between triggering nexus or not.) Since my business is very small I want to avoid triggering nexus in as many states as possible at all costs. The full extent of my advertising is ads I may place on the marketplace BUSINESS or social media to promote my listings on BUSINESS.

I would very much appreciate if I could receive a call from your department upon receiving this letter. The sooner I know how to handle your state, the better I can shape my plans for dealing with these new nexus environment. If what I sell is not taxable or considered intangible, please also detail if I would have any responsibilities to your state at all.

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 86 Ill. Adm. Code 130.101. 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. 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 reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. The Department has stated in the past that the sale of electronic downloads of music or video from the Internet is not considered the sale of tangible personal property for purposes of liability under the Retailers' Occupation Tax Act and Use Tax Act. ST-11-0035-GIL (May 13, 2011). The sale of art in digital format that is downloaded electronically would not be subject to the Retailers' Occupation Tax Act and Use Tax Act.

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 Wolters
Associate Counsel

RSW:rkn