If the transfer of computer software is made pursuant to a perpetual license that contains the 5 elements of a non-taxable license of computer software set forth in Section 130.1935(a)(1), the transaction is not a rental or lease. It is considered a non-taxable license of computer software. (This is a GIL.)

December 6, 2019

Re: General Information Letter on Application of Illinois Retailers' Occupation Tax And Use Tax on Computer Software

Dear XXX:

This letter is in response to your letter dated July 22, 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:

> We request a general information letter on the application of the Illinois Retailers' Occupation Tax and Use Tax on transfers of prewritten computer software under Section 130.1935 of the Department of Revenue ("DOR") Regulations, when the five requirements of Section 130.1935(a)(1) are met. 86 Ill. Adm. Code 130.1935.
>
> The issue raised is how to classify such transfers of prewritten software under a perpetual license to use the software. Simply put, are these transfers considered leases or rentals subject to the DOR regulations and rules on leases and rentals, or are they considered sales of intangible licenses?
>
> As a result, the question we seek clarification on is whether the DOR treats the transfer of prewritten software that meets the five requirements of Section 130.1935(a)(1) as a lease or rental of the prewritten software or the sale of a non-taxable license of software (a sale of an intangible)? This issue was specifically addressed by the DOR in 1991. At that time, the DOR held that such a transfer is not a rental, but a sale of "a non-taxable license of computer software for Retailers' Occupation Tax and Use Tax purposes." PLR 91-0671 (1991) (enclosed). Pursuant to the DOR's rules, since this letter ruling is over 10 years old, it can no longer be relied upon as reflection DOR policy.

Consequently, it is requested that the DOR confirm in a general information letter that under Section 130.1935, the transfer of prewritten software under a perpetual license that meet the five requirements of Section 130.1935(a)(1) are considered non-taxable sales of intangibles, and are not considered leases or rentals under the Illinois Retailers' Occupation and Use Tax.

Thank you for your time and consideration of this matter.

DEPARTMENT'S RESPONSE:

As set forth in the Department's regulation for computer software at 86 Ill. Adm. Code 130.1935(a)(1)(A) through (E), "[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 of 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 the transfer of computer software is made pursuant to a perpetual license that contains the 5 elements of a non-taxable license of computer software set forth in Section 130.1935(a)(1), the transaction is not a rental or lease. It is considered a non-taxable license of computer software.

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:bkl