

This letter responds to an annual survey. (This is a GIL.)

September 28, 2020

Dear Xxxx:

This letter is in response to your email dated June 15, 2020, 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:

Each year, The UNIVERSITY, in conjunction with COMPANY, Collects and disseminates information regarding the tax laws of each state. The results of the annual survey are published in the PUBLICATION, which has been one of the premier state tax reference books for nearly 40 years. Your assistance in the preparation of the 2021 edition is essential. Please complete the attached corporate income tax and sales tax questionnaires by July 31, 2020 and email me. If your responses to last year’s questionnaire would be helpful, please let us know and we will send you a copy.

All new questions are highlighted in **red font**. Due to time constraints, please respond only to the new questions and to the prior year questions that require a change. All unanswered questions will be considered to have the same response as last year, unless otherwise noted.

Please acknowledge receipt of this email and send us your response the following questions:

1. Who is the state respondent for the corporate income tax questionnaire?
2. Who is the state respondent for the sales tax questionnaire?
3. Do you prefer a complimentary hardcopy of the PUBLICATION 2021 or should we send you an access code for an eBook?

Please contact us if you have any questions and thank you for your continued support of this important tax reference book.

A. SALES AND USE TAX: COMPLIANCE AND ADMINISTRATION

[16] NEXUS. If a corporation’s sole activity in your state is the activity identified below, does the activity create an obligation to collect and remit sales/use tax (check each activity that would, by itself, create sales/use tax nexus)?

NEXUS: COOKIES AND APPS

<ul style="list-style-type: none"> Is nexus triggered by electronic “cookies” stored on in-state users’ devices by _____ out-of-state _____ sellers? <input type="checkbox"/> Yes <input type="checkbox"/> No
<ul style="list-style-type: none"> Is nexus triggered by an in-state user loading an out-of-state seller’s “app” on _____ the _____ user’s _____ device? <input type="checkbox"/> Yes <input type="checkbox"/> No
<ul style="list-style-type: none"> Does the answer change if the app is provided free of charge? <input type="checkbox"/> Yes <input type="checkbox"/> No
<ul style="list-style-type: none"> Does the answer change if the app is provided for a fee? <input type="checkbox"/> Yes <input type="checkbox"/> No

B. SALES AND USE TAX BASE

[1] TAXABLE ITEMS

INFORMATION SERVICES

<ul style="list-style-type: none"> Does your state impose sales/use tax on “information services”? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, which of the following items are taxable as information services (check all that apply)? <ul style="list-style-type: none"> <input type="checkbox"/> Press Clipping services <input type="checkbox"/> News feeds <input type="checkbox"/> Medical records <input type="checkbox"/> Customer lists <input type="checkbox"/> Real estate listings <input type="checkbox"/> Criminal background checks <input type="checkbox"/> Streaming stock quotes <input type="checkbox"/> Insurance claim processing <input type="checkbox"/> Real estate property tax records <input type="checkbox"/> Credit score information <input type="checkbox"/> Legal research databases Are any of these items taxable as something other than an information service? <input type="checkbox"/> Yes <input type="checkbox"/> No <ul style="list-style-type: none"> If YES, indicate which items and reason taxed:
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[30] INVENTORY WITHDRAWALS

<ul style="list-style-type: none">• Is the inventory that is withdrawn and used for the following purposes subject to sales/use tax (check all that apply)? <input type="checkbox"/> Samples <input type="checkbox"/> Display/demonstration <input type="checkbox"/> R&D <input type="checkbox"/> Other: <input type="checkbox"/> No withdrawals are taxed• If the inventory withdrawals are taxed, at what trade level is the tax imposed? <input type="checkbox"/> Selling price <input type="checkbox"/> Full inventory cost <input type="checkbox"/> Material co <input type="checkbox"/> Other:
<ul style="list-style-type: none">• If inventory withdrawals are taxed, in which state is tax due? <input type="checkbox"/> State in which item is removed from inventory <input type="checkbox"/> State to which item is shipped

[71] MEDICAL EQUIPMENT, SUPPLIES, AND OTHER TRANSACTIONS BY DOCTORS AND CLINICS

COVID19 EMERGENCY

<ul style="list-style-type: none">▪ Has your state enacted an exemption for COVID-19 related medical supplies? <input type="checkbox"/> Yes <input type="checkbox"/> No If NO, is your state considering an exemption for COVID-19 related medical supplies? <input type="checkbox"/> Yes <input type="checkbox"/> No• If your state has enacted or is considering an exemption, what items would be exempt (check all that apply)? <input type="checkbox"/> Masks <input type="checkbox"/> Face shields <input type="checkbox"/> Protective clothing for workers <input type="checkbox"/> Gloves <input type="checkbox"/> Anti-bacterial wipes <input type="checkbox"/> Other, explain: <input type="checkbox"/> Test kits <input type="checkbox"/> Anti-bacterial soap or cleaner

[74] COMMON MISTAKES CORPORATIONS MAKE IN FILING RETURNS AND REMITTING TAXES

<ul style="list-style-type: none">▪ What are the most common mistakes that corporations make in filing sales and use tax returns and remitting sales and use taxes? For the ease of presentation in a chart, please organize your response as a bullet point list, as follows: 1. _____ 2. _____ 3. _____ and so on
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DEPARTMENT'S RESPONSE:

We are unable to respond to your survey in the format provided. However, we hope you find the following information helpful.

Nexus: Cookies and Apps

Computer software is defined broadly in the Retailers' Occupation Tax Act. However, software-as-a-service or 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. Please note, however, that if a provider of such 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, the serviceman transferring the computer software is nonetheless subject to tax, unless the transfer qualifies as a non-taxable license of computer software (see 86 Ill. Adm. Code 130.1935(a)(1)).

If an Illinois customer downloads computer software for free from an out-of-state retailer's web site or server that is also located out-of-state, the retailer, even though it is donating tangible personal property to the customer, has exercised no power or control over the property in Illinois. In this instance, the donor would not have made any taxable use of the property in Illinois. The customer, the donee, would incur no Use Tax liability for the retailer to collect and remit to Illinois. Illinois does not tax subscriptions.

Information Services

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. 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 retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

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. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

In Illinois, information or data that is electronically transferred or downloaded is not considered the transfer of tangible personal property in this State. See 86 Ill. Adm. Code

130.2105(a)(3). However, canned computer software is considered taxable tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. See 86 Ill. Adm. Code 130.1935. If the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See Section 130.1935(c). Custom computer programs or software must be prepared to the special order of the customer.

The Department does not consider the viewing, downloading or electronically transmitting of video, text and other data over the internet to be the transfer of tangible personal property. However, if a company provides services that are accompanied with the transfer of tangible personal property (e.g., medical records delivered to a customer in a hardcopy version, rather than sent electronically), such service transactions are generally subject to tax liability.

Inventory Withdrawals

Inventory withdrawals of tangible personal property on which the person has paid Use Tax generally will not be subject to additional tax. Generally, the withdrawal of inventory purchased for resale and put to use will be subject to Use Tax unless an exemption is available. The Use Tax contains an exemption for demonstration use or interim use of tangible personal property by a retailer before he sells that tangible personal property. 35 ILCS 105/2.

A donor who purchases tangible personal property and gives the tangible personal property to a donee makes a taxable use of the property when making the gift. 86 Ill. Adm. Code 150.305(c). A donor owes Use Tax on the donor's cost price of the tangible personal property that is transferred. If the donor is the manufacturer of the item, the tax liability is based on his cost price of the materials purchased to fabricate the item.

Covid-19 Emergency

The State has not enacted an exemption for Covid-19 related supplies.

Common Mistakes Corporations Make in Filing Returns and Remitting Taxes

Retailers and servicemen file the ST-1, Sales and Use Tax and E911 Surcharge Return, to report occupation and use taxes. The most common mistakes are:

1. Taxpayers use Step 1 Line 1 to enter their taxable receipts instead of their total receipts.
2. Taxpayers not completing the deductions on Schedule A, including any tax collected.
3. Taxpayers taxable receipts entered on Line 3 do not equal the sum of the amounts reported in Step 3 Lines 4a, 5a, 6a, 7a, and 8a.
4. Taxpayers making electronic payments via MyTax Illinois make the payment for the incorrect period.
5. Taxpayers making payments using MyTax Illinois, select the incorrect payment type. Taxpayers select ST-1-X payment instead of ST-1 payment.

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
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Sales and Excise Tax

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