

This letter discusses computer software and digital information. See 86 Ill. Adm. Code 130.1935 and 86 Ill. Adm. Code 130.2105. (This is a GIL).

June 7, 2024

NAME
COMPANY
ADDRESS

Dear NAME:

This letter is in response to your letter dated March 31, 2024, 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. 2 Ill. Adm. Code 1200.120. You may access our website at <https://tax.illinois.gov> to review regulations, letter rulings and other types of information relevant to your inquiry.

Whether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored. 2 Ill. Adm. Code 1200.110(a)(4). A request for a private letter ruling must be made by, or on behalf of, an identified taxpayer. The Department will not issue letter rulings to taxpayer representatives for anonymous or unidentified taxpayers. 2 Ill. Adm. Code 200.110(a)(1). If there is case law or there are regulations dispositive of the subject of the request, the Department will also decline to issue a private letter ruling on the subject. 2 Ill. Adm. Code 200.110(a)(3)(D). There is also certain information that must be included in each request for a private letter ruling as provided in 2 Ill. Adm. Code 200.110(b)(1)-(8). The Department determined not to issue a Private Letter Ruling in response to your request. However, the Department is issuing a General Information Letter to help address your question. In your letter you have stated and made inquiry as follows:

The purpose of this request is to obtain a private letter ruling from the Office of Legal Services of the Illinois Department of Revenue (“Department”) on behalf of our client, (hereinafter, referred to as the “Company”), in order to receive a determination regarding the taxability or

exemption of the Company's services that the Company sells within Illinois. We request this determination from the Department to ensure that the Company complies with Illinois sales and use tax requirements. The Company does not have the same issue under audit or appeal with the Department or any other taxing or revenue authority. The Company has not been notified an audit or examination is pending. The Company is not currently litigating the issues. The Company does not require a determination of nexus in the state.

FACTS

The Company is an online seller which provides platform access for its customers to draft a self-drafted book. This process involves the Company's customers pre-paying for the right to use the platform and a specified number of book copies. The Company initiates an email notification to the intended recipient, explaining the details of the forthcoming [redacted] book. The recipients are granted a 12-month window, which starts from the email sending date, to complete the writing of the recipient's [redacted] book, which uses the company's self-service online platform. On the invoice, the customer's total charge for platform access is \$64.00 and the sale of the book is \$6.00.

The Company does not edit any of the recipient's content but serves as a platform to which the recipients can use it to draft their [redacted] story. By using the platform, the recipients can insert text and pictures, with no additional edits made by the Company. Upon completion of the draft text, the Company utilizes a third-party printing company, which binds and prints the text. The Company grants the recipient a license to use the platform for them to draft their content. Based on a walkthrough provided by the Company, the platform contains various sections, where recipients can add and answer questions [redacted], save their drafted stories and update, customize and preview their cover page.

ISSUES & REQUESTED ADVISEMENT

The Company requests the Department to provide guidance on:

1. Whether the Company is providing a service that is subject to tax or exempt under Illinois Tax Law.

Applicable Law & Analysis

Any retailer or retailer maintaining a place of business in Illinois is engaged in making "sales at retail", has nexus with Illinois and must collect retailer occupation tax. 35 ILCS 105/3 45. A "retail [sic] maintaining

a place of business in Illinois” is a retailer who engages in activities in Illinois, which activities in the state in which the retail business engaging in such activities is located would constitute maintaining a place of business in that state. 35 ILCS 105/2.

Under the software-as-a-service (“SaaS”) model, a consumer purchases access to another’s software application over the Internet, owned, operated and maintained by a SaaS provider [sic]. The software is not downloaded or otherwise transferred to the customer. Computer software access in a SaaS model is not subject to sales tax in Illinois. The Illinois Department of Revenue has issued a variety of literature, such as private letter rulings, that state “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 sales tax.” See ST 20-0004-PLR; ST 21-0006 PLR; ST 21-0022 GIL.

The term “tangible personal property” means something that exists physically (i.e., you can touch it and can be used or consumed. 86 Ill Adm. Code 130.120. However, items that have no commercial value to anyone other than the purchaser for whom it is produced (e.g., personalized business cards, calling cards, greeting cards, letterheads, envelopes, labels, name plates, badges and medallions) are not subject to Retailers’ Occupation Tax. 86 Ill. Adm. Code 130.1995.

As it relates to mixed transactions, that being, transactions that sale [sic] both services and tangible personal property, tangible personal property transferred incidental to a sale of a service is subject to service occupation tax. 86 Ill Adm. Code 140.101. Tax is imposed on the selling price of the tangible personal property. *Id.* If the selling price of each item of tangible personal property transferred incidental to a sale of service is not stated as a separate item on the serviceman’s billing to the service customer, then the tax imposed shall be based on 50% of the serviceman’s entire billing to the service customer, but in no event shall this amount be less than the cost price to the serviceman of the tangible personal property so transferred. *Id.* If tangible personal property is transferred incidental to a sale of a service, the tax would be imposed on the selling price of the tangible personal property. *Id.*

Analysis

The Company’s platform access is not subject to sales tax in Illinois. First, the Company’s platform likely falls into the definition of SaaS, whereby a license is granted to the recipient the right to use a software or application over the internet. The recipient does not have the right to

download or change the platform but is rather using the platform to draft his/her [redacted] story.

The sale of a book is generally subject to sales tax. However, information or data that is downloaded electronically, such as downloaded books, does not constitute the transfer of tangible personal property and is not subject to taxation. Here, a self-drafted book is akin to a downloaded book, as the Company's customers are using the platform to draft their own [redacted] story. If the Department views the sale being that of a physical book as opposed to the right to access a platform, the sale of the customized book will fall under the Department's exemption of personalized tangible personal property, where items do not have a commercial value. The recipients of the Company are drafting their self-created book not for inherent commercial value, but to pass along to their generations. Hence, these items do not have intrinsic usefulness and general utility and do not have commercial value, but rather, sentimental value for the recipient's families. Therefore, the Department will find this a nontaxable sale.

If the state views this as a mixed transaction, the law provides that if the tangible personal property is not separately stated from the sale of the service, the tax imposed should be 50% of the entire bill, but no less than the cost of the tangible personal property. Here, the Company's invoices provide a breakdown between the platform access and the sale of the book. Thus, the laws surrounding mixed transactions are not applicable.

CONCLUSION

Based on the foregoing, and based upon our review of the Company's facts, as well as the law cited, taxation should not apply to neither the sale of the book nor the right to use the Company's platform.

DEPARTMENT'S RESPONSE:

Due to the need for very specific facts, your question cannot be addressed in the context of a General Information Letter. However, this letter will provide you with basic guidelines that may be used to determine whether your client engages in taxable transactions under Illinois law.

I. Retailers' Occupation Tax

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. 35 ILCS 120/2; 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. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as “sales” tax in Illinois. However, sellers of personalized business calling cards, greeting cards, letterheads, envelopes, labels, name plates, badges, medallions and the like do not incur Retailers’ Occupation Tax liability on their receipts from such sales because they are primarily engaged in a service occupation in producing or procuring such items, which have no commercial value for their customers. 86 Ill. Adm. Code 130.1995(b)(1).

II. Service Occupation Tax

Retailers’ Occupation Tax and Use Tax do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services (*i.e.*, servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The transfer of tangible personal property to service customers may result in either Service Occupation Tax liability or Use Tax liability for servicemen, depending upon which tax base they choose to calculate their liability.

Servicemen may calculate their tax base in one of four ways: (1) Service Occupation Tax on separately-stated selling price of tangible personal property transferred incident to service; (2) Service Occupation Tax on 50% of the serviceman’s entire bill; (3) Service Occupation Tax on the serviceman’s cost price if the serviceman is a registered de minimis serviceman; or (4) Use Tax on the serviceman’s cost price if the serviceman is de minimis and is not otherwise required to be registered under Section 2a of the Retailers’ Occupation Tax Act. See 86 Ill. Adm. Code Sections 140.106; 140.108; and 140.109.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of sales of service. They are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers’ Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to

sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit tax to the Department by filing returns and do not pay tax to their suppliers. They provide suppliers with Certificates of Resale for the tangible personal property transferred to service customers. See 86 Ill. Adm. Code 140.109.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess, and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

If an entity provides services that are accompanied with the transfer of tangible personal property, including computer software, such service transactions are generally subject to tax liability under one of the four methods set forth above. If a transaction does not involve the transfer of any tangible personal property to the customer, then it generally would not be subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax.

III. Multi-Service Situations

Multi-service situations exist where a primary serviceman subcontracts work to a secondary serviceman in order to obtain part or all of the products and services desired by the service customer. See 86 Ill. Adm. Code 140.145. In a multi-service situation the tax liability is determined in accordance with 86 Ill. Adm. Code 140.145. The point at which Service Occupation Tax or Use Tax will be incurred depends upon whether the primary and secondary servicemen are registered or de minimis. 86 Ill. Adm. Code 140.145.

In multi-service situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman, or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. 86 Ill. Adm. Code 140.301(a).

For transactions between de minimis servicemen each paying Use Tax, if a primary de minimis serviceman who incurs a Use Tax liability on his cost price subcontracts service work to a secondary de minimis serviceman who also incurs a Use Tax liability on his cost price, the primary de minimis serviceman does not incur a Use Tax liability if the secondary de minimis serviceman has paid, or will remit, Illinois Use Tax on his cost price of any tangible personal property transferred to the primary serviceman and certifies that fact in writing to the primary de minimis serviceman. 35 ILCS 115/2(g); 86 Ill. Adm. Code 140.145(a). For content requirements of certifications refer to Section 140.145(b), 86 Ill. Adm. Code 140.145(b).

With respect to multi-service transactions between registered and unregistered servicemen each located in Illinois, if a registered primary serviceman located in Illinois subcontracts work to an unregistered secondary serviceman located in Illinois who opted to incur Use Tax as described in Section 140.108, tax will be incurred and remitted to the Department at two levels. The secondary de minimis serviceman will pay Use Tax to his supplier on the tangible personal property transferred to the primary serviceman. When the registered primary serviceman makes a sale of service to his service customer, he will incur Service Occupation Tax on either his selling price or his cost price. That is because a registered primary serviceman cannot provide a Certificate of Resale to the unregistered secondary serviceman and an unregistered secondary serviceman is not authorized to accept Certificates of Resale from his customers. As a result, the tax will be paid twice to the Department. 86 Ill. Adm. Code 140.145(d).

When both primary servicemen and secondary servicemen are registered, primary servicemen should provide secondary servicemen with a Certificate of Resale. 86 Ill. Adm. Code 140.145(c). A primary serviceman would then incur Service Occupation Tax based upon the separately stated selling price of the property or 50% of the bill to the service customers.

In multi-service situations, in order for both the primary de minimis serviceman and the secondary de minimis serviceman to obtain any of the exemptions listed in Section 140.108(a)(2)(A) and (B), the primary de minimis serviceman should provide the secondary de minimis serviceman with the proper documentation certifying the exemption. 86 Ill. Adm. Code 140.108(a)(2)(E).

It should be noted that sales of book binding by bookbinders and other tangible personal property by graphic arts servicemen in Illinois as an incident to the furnishing of services is a taxable transaction. 86 Ill. Adm. Code 140.140(i).

IV. Computer software and digital data or information.

Information or data that is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, does not constitute the transfer of

tangible personal property. These types of transactions represent the transfer of intangibles and are thus not subject to Retailers' Occupation and Use Tax. However, downloads of canned software, as defined more fully in 86 Ill. Adm. Code 130.1935, are subject to Retailers' Occupation and Use Tax. 86 Ill. Adm. Code 130.2105(a)(3).

"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. Computer software includes all types of software including operational, applicational, utilities, compliers, templates, shells and all other forms. 86 Ill. Adm. Code 130.1935(a).

Generally, sales or transfers of "canned" computer software intended for general or repeated use are taxable retail sales in Illinois. Canned 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. The sale or transfer by a retailer of computer software which is subject to manufacturer licenses restricting the use or reproduction of the software is also taxable. 86 Ill. Adm. Code 130.1935(a). However, if all of the criteria provided in subsection (a)(1) of Section 130.1935 are met, then neither the sale or transfer of the software nor the subsequent software updates are subject to Retailers' Occupation Tax. Specifically, 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.

86 Ill. Adm. Code 130.1935(a)(1). If a license of canned computer software does not meet all the criteria, the software is taxable.

Please note that it is very common for software to be licensed over the internet and the customer to accept the license terms by checking a box or clicking "I agree". Acceptance in this manner does not constitute a written agreement signed by the licensor and the customer for purposes of subsection (a)(1)(A) of Section 130.1935. 86 Ill. Adm. Code 130.1935(a)(1)(A)(ii). To meet the signature requirement for an exempt software license, the agreement must contain the written signature of the licensor and customer. An electronic agreement in which the customer accepts the license by means of an electronic signature that is verifiable and can be authenticated and is attached to or made part of the license will comply with this requirement. 86 Ill. Adm. Code 130.1935(a)(1)(A)(i).

A provider of software as a service is acting as a serviceman. As a serviceman, the seller does not incur Retailers' Occupation Tax. Service Occupation Tax is imposed upon all persons engaged in the business of making sales of service on all tangible personal property transferred incident to a sale of service, including computer software, and is calculated as explained above.

Computer software is defined broadly in the Retailers' Occupation Tax Act. However, computer software provided through a cloud-based delivery system is not subject to tax. A cloud-based delivery system is one in which computer software is never downloaded onto a client's computer and only accessed remotely. 86 Ill. Adm. Code 130.1935(a)(3). 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. 86 Ill. Adm. Code 130.1935(a)(4). 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.

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov> or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Katarzyna Kowalska
Associate Counsel

COMPANY
Page 10
June 7, 2024

KK:sc