

Retailers' Occupation Tax and Use Tax do not apply to sales of service. A call answering service does not meet the definition of a marketplace facilitator. (86 Ill. Adm. Code 131.130(a)). (This is a GIL)

June 11, 2024

COMPANY
NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated April 15, 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. 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:

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 operates a call center service business that provides call center services. The primary focus of the Company is to provide call center service for the restaurant industry as well as a variety of other food chain stores. When a customer contacts a restaurant, the customer's phone call is automatically directed to the Company's call centers. The Company's call centers are located offshore, primarily overseas. At the offshore call centers, agents handle the customer's order and have access to the food chain's Point of Sale (POS) system. As the customer places their order, the customer's order is entered into the POS system and appears on the screen of the restaurant stores. Upon completion of the customer's order and upon pickup or delivery, the customer pays the food chain directly for their order. The Company does not process payment, but is rather initiating orders via the Company's customers' POS system.

In accordance with the Company's Statement of Work and Master Service Agreement, the Company provides services, which include, but are not limited to the following:

1. Inbound Order Calls: Order Taking
 - 1.1. The Company will handle customer orders
 - 1.2. The Company will cross-sells alternative menu items
 - 1.3. The Company will up-sell additional menu items
 - 1.4. The Company will enroll customers into Loyalty Program
2. Inbound Non-Order Calls: Non-Order Service Calls
 - 2.1. The Company will transfer calls from customers directly to restaurants
 - 2.2. The Company will input changes to customer information upon request
 - 2.3. The Company will respond to other general inquiries

The Company generates its revenue by contacting [sic] directly with the various food chains. For example, the Company has pricing, including, but not limited to, the following: (i) flat monthly fees; (ii) fees determined if the customer calls to place an order; (iii) fees determined if the customer calls for inquiries; etc. If a call falls within a certain limited timeframe, the Company does not charge the food chains.

ISSUES & REQUESTED ADVISEMENT

The Company requests the Department to provide guidance on:

1. Whether the Company is a Marketplace Facilitator with responsibility to collect and remit sales and use tax. The Company does not seek a ruling regarding economic nexus.

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. A marketplace facilitator that meets one of two economic thresholds for nexus in Illinois is a retailer under sales and use tax law. *Id.* A “marketplace” is a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. 35 ILCS 120/1. Examples of marketplaces include Internet marketplace platforms on which tangible personal property is offered for sale; antique malls, home shopping networks selling tangible personal property over television, cable or satellite networks; or consignment shops selling tangible personal property on behalf of numerous persons. *Id.* A “marketplace facilitator” is a person who, facilitates a retail sale by an unrelated third-party marketplace seller by doing both of the following: listing or advertising for sale by the marketplace seller in a marketplace, tangible personal property that is subject to tax under the retailers’ occupation tax; and either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller. *Id.* A marketplace facilitator is required to certify to each marketplace seller that it is required to collect sales and use tax. *Id.*

Analysis

The Company does not qualify as a marketplace facilitator and the state will not impose sales tax on the Company’s call center services. The Company’s services do not appear to fit within the definition of taxable services and the Company does not fall into the definition of a marketplace facilitator. A marketplace facilitator collects the payment from the purchaser and transmits the payment to the person selling the property. Here, the Company does not collect the payment of the taxable sale, as the payment is directly collected by the Company’s clients. Therefore, the Company does not satisfy the definition of a marketplace facilitator. Further, the Company’s business may not meet the definition of a “marketplace” as the definition does not include a call center as a potential marketplace.

CONCLUSION

Based on the foregoing, and based upon our review of the Company's facts, as well as the law cited, the Company's services are not taxable, and the company does not qualify as a marketplace facilitator.

We respectfully await the State's determination upon the taxability of the Company's services. Should you have any questions or concerns, or additional information or documentation is necessary, please contact me at NUMBER, or by email at EMAIL. Thank you very much for your time and consideration.

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. 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.

Beginning January 1, 2021, a marketplace facilitator is engaged in the occupation of selling at retail tangible personal property in Illinois for the purposes of the Retailers' Occupation Tax Act. 35 ILCS 120/2(c). A marketplace is a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. See 86 Ill. Adm. Code 131.105. A marketplace facilitator is a person who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly facilitates a retail sale by an unrelated third-party marketplace seller by:

- a) listing or advertising for sale, by the marketplace seller in a marketplace, tangible personal property that is subject to tax under the Retailers' Occupation Tax Act; and
- b) either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the customer and transmitting that payment to the marketplace seller.

86 Ill. Adm. Code 131.130(a).

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 a service. See 86 Ill. Adm. Code 140.101. If a transaction does not involve the transfer of any tangible

COMPANY
Page 5
June 11, 2024

personal property to the customer, then it would not be subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax.

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,

Thomas Grudichak
Associate Counsel

TG:sce