

Sales of intangible personal property are not taxable under the Retailers' Occupation Tax Act. 86 Ill. Adm. Code 130.120. (This is a GIL.)

May 21, 2024

COMPANY
Attn: NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated April 29, 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:

We represent a company doing business in the State of Illinois ("Company") and, on behalf of Company, are requesting a written ruling regarding the tax treatment in the scenario described below.

Company is neither under audit nor contesting any proposed assessment by the Department. Nothing within this request is confidential.

FACTS

Company is incorporated in another state and does business in many states, including Illinois. Company is engaged in the business of domain name registration, web hosting, and the creation of emails and SSL certificates.

REQUESTED ADVISEMENT

Company requests the Illinois Department of Revenue provide guidance on whether web-hosting and the creation of domain names,

email, and SSL certificates are subject to Illinois' Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax.

LAW & ANALYSIS

The Retailers' Occupation Tax (ROT) is imposed on all persons engaged in the business of selling tangible personal property at retail in the state. 35 ILL. COMP. STAT. 120/2(a); ILL. ADMIN. CODE tit. 86, § 130.101(a). The Use Tax (UT) is a complementary privilege tax imposed on the privilege of using tangible personal property in Illinois which is purchased at retail. 35 ILL. COMP. STAT. 105/3. "Sale at retail" means "any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption." 35 ILL. COMP. STAT. 120/1.

General-use computer software is considered taxable tangible personal property. 35 ILL. COMP. STAT. 120/2-25. Computer software is defined as "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..." *Id.* However, it is the sale of pre-written, or "canned" software intended for general or repeated use that is subject to tax. ILL. ADMIN. CODE tit. 86, § 130.1935(a).

Alternatively, *custom* computer programs prepared to the special order of a customer are not subject to the tax of tangible property under the Retailers' Occupation Tax Act, the Use Tax Act, or the Service Use Tax Act. ILL. ADMIN. CODE tit. 86, § 130.1935(c)(1). Custom computer programs are those involving: (A) reparation or selection of the program for the customer's use requiring an analysis of the customer's requirements by the vendor; and (B) adaptation by the vendor to be used in a specific work environment, e.g., a particular make and model of a computer using a specified input or output device. *Id.*

The Service Occupation Tax (SOT) is imposed on the transfer of tangible personal property incident to the provision of a service. 35 ILL. COMP. STAT. 115/3; ILL. ADMIN. CODE tit. 86, §140.101(a). Thus, a software service provider is only subject to tax on tangible personal property deemed to be transferred as part of the service. See, e.g., ILL. PRIV. LTR. RUL. ST 17-0007-PLR (Mar. 2, 2017) at p. 5. Because custom software is not considered taxable tangible personal property, SOT applies only to a software service provider who transfers prewritten, canned software.

The Department has established that it 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. See ST 16-0035-GIL. Computer software is deemed to be transferred where a software service provider provides to its subscribers an API, applet, desktop agent, or a remote access agent to enable the subscriber to access the provider's network and services. Through such transmission, the Illinois Department of Revenue has held that the subscriber is deemed to *be receiving computer software*, which is tangible personal property, thus making the transaction taxable. ILL. GEN. INFO. LETTER No. ST 19-0007-GIL (Mar. 20, 2019) at p. 4. Software provided through a cloud-based delivery system – one in which computer software is never downloaded onto a client's computer and only accessed remotely – is not subject to tax because it is not treated as the *transfer* of taxable tangible personal property. *Id.* The user of such has exercised no power or control over the property in Illinois. *Id.* Thus, the taxability of canned software transferred incident to a service depends on type of transmission used – remote, cloud-based transfer, or a download.

Because Company is selling custom electronic property, Company is not selling taxable tangible personal property. The creation and registration of a domain, website, email, and SSL certificate involve personalized coding and programming to create a single-use product for a particular customer. Therefore, and if Company does sell software, the products Company delivers qualifies [sic] as custom computer software, which is not subject to Illinois tax. Thus, the act of registering a domain and the selling of a domain are not taxable.

Though Company is arguably offering a service, it is not taxable. Illinois does not tax software as a service – only tangible personal property transferred incident to a service. Because the property being transferred is not taxable as custom software, there is no tax due in such service transaction. For these reasons, the registering of domains, creations of websites, emails and SSL certificates are not subject to Illinois tax.

CONCLUSION

Company's creation and selling of domains, websites, emails, and SSL certificates are not subject to any of the sales taxes in Illinois.

Your advice on this matter is greatly appreciated. Should further information be required, please feel free to contact the undersigned.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether 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). Further, the regulations regarding Private Letter Rulings provide that a request for a private letter ruling must be made by, or on behalf of, an identified taxpayer. A request for ruling may be made by a taxpayer, or by a taxpayer's representative under a power of attorney from that taxpayer. The Department will not issue letter rulings to taxpayer representatives for anonymous or unidentified taxpayers. 2 Ill. Adm. Code 1200.110(a)(1). Although we are not providing you with a Private Letter Ruling, we hope the following general information will be of assistance.

Retailers' Occupation Tax and Use 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. See 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. See 35 ILCS 105/3; 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.

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.

If a transaction does not involve the transfer of any tangible personal property to the customer, then the transaction with the customer generally would not be subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax.

Computer Software

“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. Generally, sales of “canned” computer software are taxable retail sales in Illinois. Canned computer 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. 86 Ill. Adm. Code 130.1935. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. Custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See 86 Ill. Adm. Code 130.1935(c)(3). Computer software that is not custom software is considered to be canned computer software. Computer software is defined broadly in the Retailers’ Occupation Tax and Service Occupation Tax Acts. However, 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 tax.

Sales of custom computer programs prepared to the special order of the customer may not be a taxable sale. 86 Ill. Adm. Code 130.1935(c)(1). Custom software means the software which results from real and substantial changes to the operational coding of canned or pre-written software in order to meet the specific individualized requirements of the purchaser for his limited or particular use. 86 Ill. Adm. Code 130.1935(c)(2). Custom computer software is not subject to the Retailers’ Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax if the following elements are present:

- A) preparation or selection of the program for the customer’s use requires an analysis of the customer’s requirements by the vendor; and
- B) the program requires adaptation by the vendor to be used in a specific work environment, e.g., a particular make and model of a computer using a specified input or output device. 86 Ill. Adm. Code 130.1935(c)(1).

If modified software is held for general or repeated sale or lease, it is canned software. 86 Ill. Adm. Code 130.1935(c)(2). The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. 86 Ill. Adm. Code 130.1935(c)(3). Computer software that is

not custom software is considered to be canned computer software. See 86 Ill. Adm. Code 130.1935.

Intangible Property

The Retailers' Occupation Tax only applies to the sale of tangible personal property; it does not apply to receipts from sales of intangible personal property, such as shares of stocks, bonds, evidence of interest in property, corporate or other franchises and evidences of debt. 86 Ill. 130.120(a). 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. 86 Ill. Adm. Code 130.2105(a)(3). Membership fees are not gross receipts from the sale of tangible personal property. Membership fees are gross receipts received in exchange for an intangible. 86 Ill. Adm. Code 130.401(d).

You are free to submit a request for a private letter ruling. I would note that your letter lacks sufficient detail for each of the products for the Department to render a ruling. In the event you elect to file a such a request, I recommend providing a more thorough description of each to the products for which you request a ruling.

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
Associate Counsel

RSW:sce