

This letter concerns the taxation of tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.01. (This is a GIL.)

April 1, 2009

Dear Xxxxx:

This letter is in response to your letter received in this office on October 6, 2008, in which you request 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:

COMPANY, a California based company, files sales/use tax returns and remits the taxes in the State of Illinois. We are currently evaluating the taxability of our various products and services to make certain that we are in compliance with your state tax laws.

The following is a list of goods and services that we sell. Are they subject to sales taxes?

- Electronic assessments taken via internet. We offer personality tools online where the customer can either print their results or view them online.
- Software license fees from customer subscription to our website
- Books and materials ordered from catalogs and shipped to customers from California warehouse.
- Books and materials ordered via internet and shipped to customers from California warehouse.
- Registration fees for workshops/training classes on our assessments. These classes are held within your state.
- Products sold at the workshops/training classes held within your state.
- Professional consulting services – trainings held within your state. These are on-site training and organizational development consultations.

- Scoring fees to score customers' answer sheets. These are assessments taken in paper format, the customer mails in the answer sheets to our DC office and we score and mail back the results of the assessments.
- Royalty revenue received from distributors and customers for the license to use portions of our products
- Research fees collected from customers for data extraction and customization reports for their specific needs
 - Data Extraction – We create a file of scored assessment responses for analysis and interpretation by the customer
 - Data Management Service – We modify, filter, select, or clean extracted data to identify the specific participants desired. For example, a customer may want only members of a specific department or division to be included in a summary report.

Company Background:

COMPANY has been a leading publisher and provider of innovative products and services for professionals focused on meeting individual and organizational development needs. The company's hundreds of unique offerings have been used by millions of individuals in more than 50 countries to help people and organizations grow and develop by improving performance and increasing understanding.

Among COMPANY's brands are the BRAND NAMES.

In addition to COMPANY's assessment-based offerings, XYZ, a division of COMPANY, provides cutting-edge books on business and career topics, with emphasis on leadership and management, organization development, human resource development, career management, and professional improvement.

Thank you in advance.

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.

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.

The provision of professional or consulting services that do not include the transfer of tangible personal property with the provision of such services does not result in Service Occupation Tax or Use Tax liability. The transfer of any tangible personal property such as, for example, written reports, tangible media (CDs) and training manuals incident to a sale of service would result in Service Occupation Tax liability or Use Tax liability. See 86 Ill. Adm. Code 140.01 *et seq.*

In regards to workshops or training classes when tangible personal property may be transferred to participants, please see the Department's regulations on the taxation of seminar materials at 86 Ill. Adm. Code 140.129.

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 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 Section 130.1935(c)(3).

If transactions for the licensing of computer software meet all of the criteria provided in Section 130.1935(a)(1), neither the transfer of the software or the subsequent software updates will be subject to Retailers' Occupation Tax. 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 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.

Please note that acceptance of a software license agreement by clicking "accept" while online is not considered "acceptance" sufficient enough to constitute a written agreement signed by the licensor and the customer for purposes of subsection (a)(1)(A) of Section 130.1935.

Charges for updates of canned software are fully taxable pursuant to Section 130.1935. If the updates qualify as custom software under Section 130.1935(c), they may not be taxable. But, if maintenance agreements provide for updates of canned software, and the charges for those updates are not separately stated and taxed, then the whole agreement would be taxable as sales of canned software.

Assuming that services provided, such as installation, phone support, training, and seminars, do not require the transfer of tangible personal property to the recipients of those services, charges for such services are exempt if they are separately stated from the selling price of canned software. See Section 130.1935(b). If computer software training or other support services are provided in

conjunction with a sale of custom computer software or a qualifying license of computer software under Section 130.1935(a)(1), the charges for that training are not subject to tax.

Your letter does not state whether the company has nexus or why the Company is registered to collect and remit taxes to the Department. However, if your company voluntarily registered with the Department to collect and remit Use Taxes on behalf of your customers, it is the duty of the retailer to collect the tax upon all tangible personal property sold to his knowledge for use within this State, in the same manner and subject to the same requirements, including the furnishing of a receipt to the purchaser (if demanded by the purchaser), as a retailer maintaining a place of business within this State. 35 ILCS 105/6; 86 Ill. Adm. Code 150.805.

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

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