

A de minimis serviceman who is not registered as a retailer under Section 2a of the Retailers' Occupation Tax and is not required to be registered under Section 2a of the Retailers' Occupation Tax owes Use Tax on the cost price of tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.108. (This is a PLR.)

July 19, 2023

NAME
TAXPAYER REPRESENTATIVE
ADDRESS

Dear NAME:

This letter is in response to your letter dated March 3, 2023, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY, nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of our client, COMPANY ("Company"), please allow this to serve as a request for a Private Letter Ruling as authorized by the Illinois Department of Revenue (the "Department") per 2 Ill. Admin. Code 1200.110 with respect to the inquiry detailed below. If the Department has any questions relating to the facts described, please contact the undersigned.

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The firm of TAXPAYER REPRESENTATIVE (the "Representative") is authorized to request the Private letter Ruling on behalf of the Company.

Statement of Facts

Taxpayer Information

This Private letter Ruling ("PLR") is requested to determine the Retailers' Occupation Tax, Use Tax, Service Occupation Tax, and Service Use Tax consequences of the actual business practices of the Company. The Company is not currently the subject of litigation or audit regarding the matters discussed in this PLR relating to Illinois transactions. To the best of the knowledge of both the Company and Representative, the Department has not previously ruled on this or a similar issue for the taxpayer or any predecessor. The Company, and any of its representatives, have not previously submitted the same or similar issue to the Department and withdrawn before a letter ruling was issued. The Company is registered with the Department for sales and use taxes.

Description of Company's Business Operations

The Company is a publicly held STATE1 corporation based in STATE2. The Company operates a marketplace utilizing a mobile phone application to facilitate SERVICE services ("Marketplace") by connecting SERVICE PROVIDERS ("Service Providers") with SERVICE RECIPIENTS ("Service Recipients") in real time. The Company's Marketplace provides technological infrastructure, marketing, and account settlement services, and the Service Providers who are matched through the Marketplace provide services to their Service Recipients. The Service Providers do not transfer any tangible goods as part of their services, and sales of tangible goods are not facilitated through the Marketplace. The service provided by Service Providers to Service Recipients is not subject to Illinois sales tax.

Material Facts Relating to PLR Request

Company's Business Model

The Company's business model is comprised of two distinct service transactions:

- (1) The marketplace facilitation service provided by the Company in exchange for compensation paid to the Company by the Service Provider; and
- (2) The SERVICE service ultimately provided by Service Providers to Service Recipients.

The Company's Marketplace allows Service Providers and Service Recipients to locate parties with whom they want to transact; allows Services Providers and Service Recipients to view each other's ratings shown in the app; and makes transactions easy for Service Providers and Service Recipients, since the Marketplace includes a payment processing function.

The Company uses independent, third-party payment processors to manage the payment processing function by collecting funds from Service Recipients and transferring those funds to Service Providers net of fees charged to Service Providers by the Company for use of the Marketplace. The fees that are netted from these payments are transferred to the Company by the third-party payment processor.

For revenue accounting purposes and in accordance with generally accepted accounting principles (GAAP), the Company recognizes revenue on a net basis primarily based on its determination that it is not deemed to be the primary obligor of the services provided by the Service Providers. That is, the Company does not recognize the (gross) amount charged to a Service Recipient as its revenue, and instead only recognizes the (net) fees that are charged to Service Providers by the Company.

The Service Providers rely on the Company's Marketplace as a lead generator and facilitator of the SERVICE services between Service Providers and Service Recipients. The Service Recipients rely on the Marketplace to connect them with vetted Service Providers who can timely provide SERVICE services at a given place and time. At the completion of the SERVICE service, the third-party payment processors ensure the Service Provider receives payment from the Service Recipient. The third-party payment processors withhold the Company's fee for facilitating the transaction from the amount paid to the Service Provider by the Service Recipient, and remit the fee to the Company.

Each Service Provider who registers with the Company receives a small kit from the Company containing items of tangible personal property. These kits generally contain information and printed material (such as placards and stickers) useful to a Service Provider when providing services to Service Recipients. In some cases, the placards and stickers may be required by local law. Service Providers in select markets who complete a prescribed number of additional transactions with Service Recipients may receive additional branded tangible personal property. The kits are shipped via common carrier to Service Providers from outside Illinois. The cash value of these items is relatively small, and the Company does not charge the Service Providers for these items. In the event that a Service Provider stops using the Marketplace, the Service Providers are

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not required to return the items to the Company. Company reports and pays Illinois use tax on the cost of the tangible personal property delivered to Service Providers located in Illinois.

Requested Ruling

The Company requests that the Department rule on the Company's provision of marketplace facilitation services as follows:

1. The marketplace facilitation services are non-taxable services and the fees received by the Company for providing those services are not subject to the Retailers' Occupation Tax or Use Tax.
2. Service Occupation Tax is not applicable as the cost price of any tangible property transferred as part of the service is de minimis.
3. Sales or use tax will be applicable to any tangible personal property provided by the Company to Service Providers located in Illinois based on the cost of the property delivered.

Statement of Law

Statutes, Rules, and Rulings:

35 ILCS 120/1

35 ILCS 120/2

35 ILCS 105/2

35 ILCS 105/3

35 ILCS 115/3

86 Ill. Adm. Code 130.120

86 Ill. Admin. Code 130.120

86 Ill. Admin. Code 140.101

86 Ill. Admin. Code 140.105

86 Ill. Admin. Code 140.106

86 Ill. Admin. Code 140.108

86 Ill. Admin. Code 140.109

Law Relevant to Company's Services

Illinois generally does not subject services to tax under the Retailers' Occupation Tax ("ROT") and Use Tax ("UT") per 35 ILCS 120/2, 35 ILCS 105/3, and 86 Ill. Adm. Code 130.120. Further, the Service Providers transferring tangible personal property to Service Recipients will incur either Service Occupation Tax ("SOT") or UT liability upon the property transferred per 35 ILCS 115/3, and 86 Ill. Admin. Code 140.101. This will depend on whether a service provider is deemed a "serviceman" or "de minimis serviceman," whether the customer is separately billed for

materials, and whether the service provider is registered to collect ROT or is required to be. Depending upon the aforementioned factors, a service provider may incur tax liability on the material transferred incident to their service in one of four methods.

If a service provider is deemed a "serviceman," it will incur SOT based upon either the separately stated sales price of materials to the customer or based upon 50% of the total lump sum charge for service and materials to the customer depending upon the method of billing. A service provider transferring tangible personal property is considered a "serviceman" if the ratio between the cost of tangible personal property transferred incident to sales of service and the "serviceman's" total annual gross receipts from all sales of service is 35% or greater per 86 Ill. Admin. Code 140.105(a). If deemed a "serviceman" and the price of materials to the customer is separately stated from the service charges, the SOT liability is based on the sales price of the tangible personal property sold per 86 Ill. Admin. Code 140.106(a)(1). If the "serviceman" does not separately state the price of materials to the customer, the SOT liability is based upon 50% of the entire customer charge per 86 Ill. Admin. Code 140.106(a)(2). The "serviceman" may then bill Service Use Tax ("SUT") to its customer in the amount of the SOT liability to recover the cost of the SOT remitted to Illinois per 86 Ill. Admin. Code 140.106(e).

A service provider transferring tangible personal property is considered a "de minimis serviceman" if the serviceman's cost ratio is less than 35% per 86 Ill. Admin. Code 140.105(b). If a "de minimis serviceman" is required to be registered as a retailer under Section 2a of the Retailers' Occupation Tax Act, the "de minimis serviceman" incurs SOT liability on the cost price materials provided to the customer and may bill SUT to the customer for this amount to recover the cost of SOT remitted to Illinois per 86 Ill. Admin. Code 140.109(a), (a)(4). However, if a "de minimis serviceman" is not required to be registered as a retailer under Section 2a of the Retailers' Occupation Tax Act, the "de minimis serviceman" incurs UT liability on the cost price of the materials provide to customers per 86 Ill. Admin. Code 140.108(a), (a)(l).

Analysis of Grounds for Requested Ruling

We have examined the relevant statutes, regulations, and guidance issued by the Department. The Department has not issued any letter rulings or guidance on this topic within the last 10 years that the taxpayer or state can rely on.

Company's Services:

The Company's primary service offering constitutes the sale of non-taxable services. The services include a number of elements including marketplace facilitation, marketing, and account settlement services, all which are simply technology-enabled. Furthermore, the transactions between the Service Providers and Service Recipients are a non-taxable service. There is no transfer of any tangible property as part of the service provided by Service Providers to Service Recipients. Service Recipients have access to the Marketplace that is made available by the Company to connect them to Service Providers, and there is no charge made by Company to Service Recipients or Service Providers to access the Marketplace. Service Recipients are charged and pay for the services provided by the in-state Service Provider. The Service Providers pay the Company a fee only when there is a completed transaction between the Service Provider and Service Recipient.

The Company's offering of marketplace facilitation services are not retail sales of tangible goods, and as such, the Company should be considered a service provider under SOT and SUT. As a service provider the Company may incur tax liability on materials provided to Service Providers as part of the services it provides. As noted above, the Company does provide a small amount of tangible personal property to Service Providers without a specific charge for such property. Therefore, because only an insignificant amount of tangible personal property is transferred to Service Providers, SOT would not apply.

The value of this property is significantly lower than 35% of the revenue the Company receives from Service Providers. Therefore, the cost ratio between the cost of tangible personal property transferred incident to sales of service and compared to the total annual gross receipts from all sales of services is insignificant. Therefore, the Company should be considered a "de minimis serviceman." As noted above, the Company does pay Illinois SUT on the items provided to its Service Providers which should be the extent of the Company's SUT obligation related to the providing of the above-described services in Illinois.

Authorities Contrary to Requested Ruling

As mentioned previously, Illinois has not issued any letter rulings or guidance on this topic within the last 10 years that the taxpayer or state can rely on.

Conclusion

The Company's marketplace facilitation services are non-taxable services not subject to ROT. The Company's marketplace facilitation services are

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not subject to SOT as there is no significant provision of tangible personal property to Company's customers (i.e., Service Providers). Further, the Company's services are not subject to SUT as the cost ratio is considered de minimis.

We respectfully request a letter ruling on the issues presented in this letter. Thank you for your time and consideration in this matter. If you have any questions, or require additional information, please feel free to contact me.

Updated information provided to the Department indicates that, in fact, the Company pays Illinois UT (not SUT) on the items provided to its SERVICE PROVIDERS.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. 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.

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 purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. The serviceman's liability may be calculated in one of four ways:

- 1) separately-stated selling price of tangible personal property transferred incident to service;
- 2) 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.

If the 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.

Based on the information provided in your letter, the SERVICE service provided by SERVICE PROVIDERS (Service Providers) to SERVICE RECIPIENTS (Service Recipients) is a provision of service in which no tangible personal property is transferred. This SERVICE service is not subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax.

With respect to the marketplace facilitation service provided by COMPANY (i.e., the mobile phone application to facilitate SERVICE services) in exchange for the compensation paid to COMPANY by the SERVICE PROVIDER, it is the Department's opinion that this is a service incident to which a small amount of tangible personal property (ITEMS) is transferred by COMPANY to the SERVICE PROVIDER. This marketplace facilitation service is not subject to Retailers' Occupation Tax and no corresponding Use Tax is owed by SERVICE PROVIDERS. The ITEMS that each SERVICE PROVIDER who registers with COMPANY receives from COMPANY contains items of tangible personal property, such as placards and stickers, and, in some cases, additional branded tangible personal property. COMPANY does not charge for these items and the SERVICE PROVIDERS are not required to return the

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items if the SERVICE PROVIDER stops using the marketplace. The value of the property transferred to SERVICE PROVIDERS is significantly lower than 35% of the revenue COMPANY receives from Service Providers. Based on these representations, the Department agrees that COMPANY is a de minimis serviceman and since COMPANY is not registered as a retailer under Section 2a of the Retailers' Occupation Tax and is not required to be registered as a retailer under Section 2a of the Retailers' Occupation Tax, COMPANY owes only Use Tax on the cost price of tangible personal property transferred incident to the service in accordance with item 4 listed above. See 86 Ill. Adm. Code 140.108.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Samuel J. Moore
Chairman, Private Letter Ruling Committee

SJM