

Computer software provided separately from a subscription of software as a service, free-of-charge from an out-of-State retailer's website or server that is also located out of State, is not subject to tax. See 86 Ill. Adm. Code 130.1935(a). (This is a GIL.) **This letter is superseded by ST 25-0057-GIL.**

September 16, 2025

NAME
TITLE
COMPANY1
ADDRESS1

Dear NAME:

This letter is in response to your letter dated June 11, 2025, 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 <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. 2 Ill. Adm. Code 1200.110(a)(4). If there is case law or there are regulations dispositive of the subject of the request, the Department will decline to issue a private letter ruling on the subject. 2 Ill. Adm. Code 1200.110(a)(3)(D). Having reviewed your request, the Department notes that there are laws and regulations dispositive of the subject of the request. Thus, the Department is declining to issue a private letter ruling in response to your request. However, 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:

COMPANY1, on behalf of our client, COMPANY2 (the "Company"), respectfully requests the Illinois Department of Revenue (the "Department") provide guidance in the form of a Private Letter Ruling under Ill. Admin. Code

2 § 1200.110(b), on the sales and use tax implications of the facts set out below:

I. Statement Relating to Request

The Company makes the following representations:

1. To the best of the Company's or its representative's knowledge, the Department has not previously ruled on the same or similar issue for the taxpayer or a predecessor or the same or similar issue was requested but withdrawn before a letter ruling was issued.
2. The Company is not currently engaged in litigation with the Department in regard to this or any other tax matter.
3. The Company is not currently under audit by the Department in regard to this matter or for the period to which the requested Private Letter Ruling applies.
4. The Company requests that certain information be redacted from the PLR prior to dissemination to others. The Company requests that its name, address, the location of its office, the name of its representatives, all references to "CHATBOT", all references to Exhibits, and the Exhibits themselves be redacted.
5. A signature of the taxpayer's representative, and a duly executed power of attorney in favor of the representative is enclosed.
6. Taxpayer's identifying information is set out as follows:

COMPANY2

ADDRESS2

FEIN: ##-#####

II. Statement of Material Facts

COMPANY2 is a STATE public benefit corporation headquartered outside of Illinois. The Company offers advanced artificial intelligence ("AI") services to individuals, developers, businesses, and researchers. The primary service provided by the Company is a generative AI chatbot named "CHATBOT," (hereinafter referred to as "Chatbot") which is powered by a series of large language models ("LLMs").¹ Chatbot is trained to respond to plain language

¹ Large language models (LLMs) are neural networks with billions (or more) of parameters trained on massive text data using self-supervised learning. These models can capture complex patterns in language and generate fluent, coherent text. Scaling up model size and training data has led to emergent abilities beyond conventional language processing, enabling LLMs to perform complex reasoning, follow instructions, and solve novel tasks with few or no examples. Zhao et al. "A Survey of Large Language Models" (2023).

prompts in a human-like manner and can assist with tasks such as writing, analysis, coding, and problem-solving. The Company has partnered with Google Cloud and AWS for cloud infrastructure requirements needed to build, train, and deploy its models. The Company provides four subscription CHATBOT plans: two for individual use and two for business use.

The software that operates Chatbot is never downloaded onto a customer's computer. Instead, customers can create a login and access Chatbot through the Company website or via a free app available on the iOS and Android app stores. The free app acts as a conduit for accessing Chatbot services. The pricing does not change regardless of whether the customer chooses to use Chatbot's services via the app or Company website. Both methods require the customer provide their own internet access to use Chatbot's functionalities.

Chatbot API

Additionally, users have the option of utilizing Chatbot's API product, enabling them to integrate advanced language understanding and generation capabilities into their own applications. To access Company's Chatbot API, users must register on the Company's platform and obtain an API key. The user then accesses a software development kit ("SDK"), such as the Company Python library ("Python SDK"), either in the cloud or locally (i.e., downloaded on the user's computer). For the Python SDK specifically, the Company grants an MIT license. Exhibit A. This license is a permissible, open-source license that allows users to access the Python SDK, among other rights, free of charge. The underlying Python software used to develop the Python SDK is not owned by the Company and was also acquired free of charge pursuant to an open-source license.

After accessing or downloading the SDK, users then write their own code that connects to Chatbot API's endpoint. The API requires the customers use their own internet access, with processing occurring on servers used by the Company that are all located outside of Illinois. The Company does not deliver, electronically or physically, any software or programming code to customers. Any issues with the code in the SDK would be considered separate from any failure on the API; for instance, if the SDK was to receive an update that rendered it useless, the API service would still be available. The SDK has no independent value and is used solely for purposes of accessing Chatbot's functionalities.

Both the API key and the SDK library are available for free to everyone, but accessing Chatbot functionalities via the API requires a monthly paid

subscription or usage credits.² The Company offers two Chatbot API plans: the Scale Plan and the Build Plan. In the Scale Plan, access is billed monthly via invoicing. In the Build Plan, access is pre-paid based on anticipated API usage. With either plan, the increased functionalities terminate if the customer stops paying for them.

III. Question Presented

Does the Company owe Retailers' Occupation Tax, Use Tax, or Service Occupation Tax for providing generative AI services, when software developers can download a free ADK kit to make API requests to access Company's services?

IV. Illinois Law

Retailers' Occupation Tax, Service Occupation Tax, and Use Tax Distinguished

The Illinois Retailers' Occupation Tax Act imposes a tax upon "persons engaged in the business of selling at retail...tangible personal property" in Illinois.³ Retailers Occupation Tax does not apply to sales of services.

Instead, under the Service Occupation Tax Act, persons engaged in the business of making sales of services (i.e., "servicemen") are taxed on all tangible personal property transferred as an incident of the sales of service.⁴ 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 the activities.⁵ The servicemen'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

² Usage credits are a form of payment system used for accessing and utilizing an API (Application Programming Interface). They work as a currency or allowance that determines how much of the API service you can use.

³ 35 ILCS § 120/2(a).

⁴ 35 ILCS § 115/3. See also 86 Ill. Admin. Code § 140.101.

⁵ 86 Ill. Admin. Code § 140.105; See, e.g., discussion in Ill. Dept. of Rev. General Information Letter No. ST 17-0006-GIL (Mar. 2, 2017).

- 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 Retailer's Occupation Tax Act.⁶

In no event can the Service Occupation Tax liability be based on an amount less than the serviceman's cost price of the tangible personal property being transferred.⁷

Computer Software

Canned computer software is considered tangible personal property, regardless of how the software is transferred or transmitted to the customer.⁸ Computer software is defined to mean:

“a set of statements, data, or instruction 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 that is held for repeated sale or lease, and all associated documentation and materials, if any, whether contained on magnetic tapes, discs, cards, or other devices or media...”⁹

Computer software includes all types of software including operational, applicational, utilities, compilers, templates, shells, and all other forms.¹⁰ However, the Department has advised through revenue rulings that a provider of computer software through a cloud-based delivery system is treated as a serviceman and is providing a service.¹¹ The sale of such services generally would not be subject to Retailers' Occupation Tax or Use Tax provided no tangible personal property is downloaded as part of the transaction.¹²

⁶ 86 Ill. Admin. Code §§ 140.106; 140.108; 140.109; see also, Ill. Dept. of Rev. General Information Letter No. ST 17-0006-GIL (Mar. 2, 2017).

⁷ 35 ILCS § 110/3-10

⁸ 86 Ill. Admin. Code § 130.1935(a).

⁹ 35 ILCS § 105/3-25; 35 ILCS § 110/3-25; 53 ILCS § 115/3-25; 35 ILCS § 120/2-25.

¹⁰ 86 Ill. Admin. Code § 130.1935(a).

¹¹ See, e.g., Ill. Dept. of Rev. General Information Letter No. ST 24-0002-PLR (Sept. 17, 2024).

¹² See, e.g., Ill. Dept. of Rev. General Information Letter No. ST-23-0002-GIL (Feb. 7, 2023).

Illinois law provides that “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.”¹³ The transfer of the API, applet, desktop agent, or remote access agent is subject to tax unless the transfer qualifies as a non-taxable computer software license under section 120/2-5(49) of the Illinois Compiled Statutes,¹⁴ or is otherwise not taxable. If the cloud provider provides such computer software, the provider is subject to Illinois tax, using one of the four rules for taxability of servicemen as described above.

De Minimis Servicemen

Servicemen may qualify as *de minimis* if 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.¹⁵ As noted above, *de minimis* servicemen pay either Service Occupation Tax or Use Tax based on the cost price of tangible personal property transferred. “Cost price” is defined to mean:

“Cost Price” means the consideration paid by the serviceman for a purchase, including, on and after January 1, 2025, a lease, valued in money, whether paid in money or otherwise, including cash, credits and services, and shall be determined without any deduction on account of the supplier’s cost of the property sold or on account of any other expense incurred by the supplier. When a serviceman contracts out part or all of the services required in his sale of service, it shall be presumed that the cost price to the serviceman of the property transferred to him by his or her subcontractor is equal to 50% of the subcontractor’s charges to the serviceman in the absence of proof of the

¹³ 86 Ill. Admin. Code § 130.1935(a)(4).

¹⁴ Illinois General Information Letter ST 20-0018-GIL. 35 ILCS § 120/2-5(49) provides that 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 license 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.”

¹⁵ 86 Ill. Admin. Code §§ 140.108, 140.109; see also Ill. Dept. of Rev. General Information Letter No. ST 24-0002-PLR, 09/17, 2024.

consideration paid by the subcontractor for the purchase of such property.”¹⁶

The Department has concluded that “a company that distributes computer software free of charge that is acquired and transferred subject to original, third-party open-source licenses...does not include Retailers’ Occupation Tax liability on the transfer of the software to its customers.”¹⁷ Additionally, if a company obtains open source computer software free of charge, it does not incur any Use Tax liability.¹⁸

Use in Illinois

Further, Illinois has issued, through private letter rulings, the following guidance with respect to computer software downloaded for free from an out-of-state retailer’s website:

If an Illinois customer downloads computer software for free from an out-of-State retailer’s website or server that is also located out of state, the retailer, even though it is donating tangible personal property to the customer, has exercised no power or control over the property in Illinois.¹⁹

V. Discussion/Analysis

a. No Retailers’ Occupation Tax or Use Tax is due on Company’s sales of services

Illinois has not issued specific guidance on the taxability of AI and related services. Company grants users access to its proprietary software and algorithm remotely. Chatbot users access the platform and its functionalities either through the website interface or the free app. Users are unable to download the software that operates Chatbot or alter or control the algorithm. Furthermore, access to Chatbot is exclusively via the internet, whether through the app or the Company’s website, with no offline component or functionality. This means that all interactions with Chatbot require an active internet connection, ensuring that the software and algorithm remain centrally controlled and updated by the Company. As such, Company’s services are most similar to software as a service or a similar service as the

¹⁶ 35 ILCS § 115/2.

¹⁷ Ill. Dept. of Rev. General Information Letter No. ST 20-0009-GIL, 06/09/2020.

¹⁸ *Id.*

¹⁹ See Ill. Dept. of Rev. General Information Letter No. ST 20-0018-GIL; Ill. Dept. of Rev. General Information Letter No. ST 24-0002-PLR, 09/17/2024.

user is paying for access and use of Chatbot that is remotely accessed, can only be used with a separately purchased internet connection and is owned and maintained by the Company.

As noted above, software as a service is not subject to Retailers' Occupation Tax or Use Tax in Illinois. Instead, software as a service and similar service providers are treated as servicemen and taxable under one of the four methods described above for Service Occupation Tax and Service Use Tax to the extent any computer software or other tangible personal property is transferred to the user.

b. No Service Occupation Tax or Use Tax is due on Company's sales of services

i. Company is a de minimis [sic] serviceman and does not owe Service Occupation Tax or Use Tax on open-source software licenses

Applying the four methods for taxability of servicemen, Company is a *de minimis* serviceman. Any Python software incorporated into the license used to acquire Company's services via API was acquired for free pursuant to an open-source license. As such, Company's ratio of annual aggregate cost price of tangible personal property transferred incident to sales of services compared to annual gross receipts from service transaction is less than 35%. No use tax is due on the transaction because the cost price of any software acquired and incorporated is zero. Moreover, Company does not make any other sales at retail requiring it to be registered with the IL DOR under section 2A of the Retailers' Occupations Tax Act. Accordingly, Company should be considered a *de minimis* unregistered serviceman.

ii. There is no taxable use of Company's software in Illinois

Further, there is no use tax due on Company's provision of the free SDK kits because no software is hosted in Illinois. As noted above, numerous Illinois letter rulings have advised that there is no taxable use of software in Illinois if an Illinois customer downloads computer software for free from an out-of-State retailer's website or server that is also located out of state.

In this instance, Company would not have made any taxable use of its software in Illinois. The customer would incur no Use Tax liability as the customer did not acquire the software from a retail transaction. As there is no taxable use in Illinois, there is no use tax liability.

V. Conclusion

For the reasons stated herein, the Company requests that the Department provide written guidance confirming the Company's interpretation of Illinois law. Company would be happy to provide additional facts at the Department's request.

Please contact me with any questions, concerns, or requests for clarification or elaboration on this request.

DEPARTMENT'S RESPONSE:

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 two 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. 35 ILCS 105/3-45; 86 Ill. Adm. Code 150.401. 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. 86 Ill. Adm. Code 150.130(b). If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department. 35 ILCS 105/3-45; 86 Ill. Adm. Code 150.701(a).

Service Occupation Tax

Retailers' Occupation Tax and Use Tax do not apply to sales of service. See 35 ILCS 120/2; 35 ILCS 105/3. 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. 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) 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. 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 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. 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.

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. Computer software includes all types of software, including operational, applicational, utilities, compilers, 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 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 for the customer to check a box that states that the customer accepts the license terms. 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. 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).

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 (35 ILCS 115/3). Illinois generally does not tax subscriptions of software as a service. That is, computer software provided through a cloud-based delivery system – a system in which the computer software is never downloaded onto a client's computer and is only accessed remotely – is not subject to tax. 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. Conversely, if an Illinois customer downloads computer software, separate and unrelated from their subscription of software as a service, for free from an out-of-State retailer's website or server that is also located out-of-State, the retailer, even though it is providing tangible personal property to the customer, has exercised no power or control over the property in Illinois. In this instance, the retailer would not have made any taxable use of the property in Illinois. The customer would incur no Use Tax liability as the customer did not acquire the software from a retail transaction.

COMPANY2

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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,

A handwritten signature in black ink, appearing to be "GE" with a long horizontal stroke extending to the left.

George L. Encarnacion, Jr.
Associate Counsel

GLE:sce