

Sales of “canned” computer software are taxable retail sales in Illinois regardless of the means of the delivery of that software. See 86 Ill. Adm. Code 130.1935. (This is a GIL).

October 24, 2025

NAME
TITLE
COMPANY1
ADDRESS

Dear NAME:

This letter is in response to your letter dated August 25, 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. We hope, however, the following General Information Letter will be helpful in addressing your questions.

In your letter you have stated and made inquiry as follows:

We need to request a Private Letter Ruling in a sales tax dispute with a customer of ours about the taxability of the sale of canned software accessed digitally. Specifically, it relates to the **timing** of the customer’s use of our product.

Our Information:

COMPANY1 FEIN# ##-#####, IL Sales Tax Account# ####-####

Customer's Information:

COMPANY2, FEIN# ##-#####

Specific Sales Tax Period: MONTH YEAR

Statement of Facts: COMPANY1 is in the business of selling access to the use of our Fonts via the licensing of "Prewritten/Canned Software, zero modifications" [NAICS ##### (2017) and ##### (2022)]. This creates a sales tax liability within the state of IL which considers this a retail sale of tangible personal property. Most sales are made before the customer attempts to use our product. In some cases, our research finds where a company is accessing our product without licensing. We assume good intentions and reach out to the customer to get them licensed. At that time, they may choose to contract our services and keep a current license via purchase – these are referred to internally as "current-use" contracts. Some choose not to enter a relationship with us and just pay the amount billed to them for their use of our product without a license – these are referred to internally as "past-use" contracts.

Analysis of Facts:

Our Customer's Position on Facts: Our customer maintains that the attached contract is "just a settlement to make the situation go away and admits zero actual use" of our product by the customer having signed the contract and paid the invoice, minus the sales tax charged. Their position is that *their interpretation* makes this "sale" into a "settlement". That they are not liable to pay the billed sales tax because "settlements are not subject to sales taxes in the state of IL". They want their purchase to be reclassified as a settlement and the sales tax removed from their invoice.

Our position on Facts: At no point is a sale of tangible personal property to be reclassified as a "settlement" – however, we often have customers push back and assert that these cases are "non-taxable settlements" and refuse to pay the sales taxes billed. In these cases of "past-use" contracts (where the customer has accessed our software without a license agreement in place) our position has always been in support of the **intent** of the IL sales tax laws – that regardless of the **timing** of when the customer accesses/accessed the product, that if the product type is taxable, we charge sales tax as of the date of invoicing. (Obviously, this is *Except* in

cases where we receive a valid exemption certificate from our customer that removes our sales tax collection liability).

1. In the contract, it specifies in section 2-Past Use License: "In consideration of Customer's agreement to make the payments called for herein, COMPANY1 hereby grants Customer a past use license as set forth in Attachment 1 to this Agreement."
2. In the contract, it specifies in Section 5-Consideration: "The Fee excludes taxes, duties or similar charges. Any applicable sales, use, excise, withholding, value added, property, duty, customs charges and other taxes and government charges imposed on transactions, excluding any taxes based on COMPANY1 net income, shall be paid by Customer."

The two items referenced above show that we were fully transparent and up-front that this was not a settlement but a license fee that would be subject to sales taxes.

At this time, due to continued dispute, we request that the state of IL make an official determination as to which party is correctly upholding the IL Sales Tax laws so that this matter can be resolved. Thank you.

Declaration of no pending matters: The sales tax was remitted timely by COMPANY1 for the period of MONTH YEAR, and the issue is not currently under audit or involved in litigation with the Department of Revenue.

Review of legal authority: We have reviewed the relevant Illinois tax statutes, regulations, and administrative opinions but were unable to locate dispositive authority on the matter regarding the timing of the use of a product at any point causing the sale of tangible personal property to be reclassified as a "settlement".

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. 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

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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).

Retailer's Occupation Tax is measured by the retailer's gross receipts from such sales made in the course of such business. 86 Ill. Adm. Code 130.101(a). "Sale at retail" mean any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subject to a use for which it was purchased, for a valuable consideration. 86 Ill. Adm. Code 130.201(a)(1). This includes sales or transfers of "canned" computer software intended for general or repeated use. 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). Generally, if all the elements for a sale at retail are met, i.e., the transfer of tangible personal property for use or consumption, for consideration, tax is owed on the gross receipts of that sale.

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 read "GE", with a long horizontal line extending to the left.

George L. Encarnacion, Jr.
Associate Counsel

GLE:sce