A provider of software as a service is acting as a serviceman. If a serviceman transfers tangible personal property incident to that service, they must calculate their tax liability using one of the four applicable Service Occupation tax methods. (This is a GIL).

December 24, 2025

NAME
TITLE
COMPANY
ADDRESS
Email: EMAIL

Dear NAME:

This letter is in response to your letter dated October 2, 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.

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:

> On behalf of our client, hereby referred to as "the Company" we are submitting a petition for a legal opinion on tax and fee matters including sales and use tax and property tax guidance on all offerings currently provided by the Company.
>
> **BACKGROUND – COMPANY INFORMATION**
>
> The Company is a life sciences technology company in the field of IVF ("In Vitro Fertilization") who assists with reproductive specimen storage by partnering with fertility clinics. The Company's Digital Specimen Management links specimens, software, and storage. The management service provides cryo-management of frozen eggs and embryos that are digitally identified,

safely managed with automated robotics, and remotely tracked and monitored 24/7 using proprietary RFID ("Radio Frequency Identification") enabled labware and an integrated software management solution. The patient specimens are tracked and logged in a proprietary digital database software that integrates with clinics EMR ("Electronic Medical Record") software.

The Company's services help clinics reduce risk, improve accuracy, and streamline operations while offering patients the highest levels of security, transparency, and peace of mind for their specimen storage. To ensure a complete digital chain of custody, each cryo-device is uniquely identified with a barcoded label and then linked to an RFID chip embedded or BEACON that is redundantly labeled with a linear barcode and alphanumeric eye-readable code. Without these solutions provided by the Company, specimen labels are hand-written, typed, and then typically tracked manually with spreadsheets and paper records. The Company generally partners with Clinics for the Clinic's patients to store frozen eggs and embryos. However, if patients do not have a Clinic nearby that is partnered with the Company, then patients can arrange directly with the Company to have their eggs and embryos transferred to one of the Company's Biorepository sites for storage.

The Company offers a variety of solutions to meet clinics and patients' needs. Thees include:

- **In-Clinic** – The on-site storage solution which consists of a vault tank, robot tower, and platform usage can hold ~1,100 – 3,200 patient specimen per storage unit.
- **Offsite** – The Company offers the highest standard of care in offsite storage in a biorepository in the U.S. with all of the benefits of Digital Specimen Management services, seamless and trusted transport, and patient billing.
- **Hybrid** – This is offered to clinics where the clinic chooses to mix and match the storage solutions that work for them between In-Clinic and Offsite solutions.

Below is a summary in detail of the service offering descriptions and details into the billing methods.

As part of the Company's service agreements with the Clinics, the Clinics purchase and lease equipment and license the Company's digital database software from the Company. The Clinic is granted a limited, non-exclusive, non-transferable, non-sublicensable, worldwide right and license

during the term of the service agreement to access the specimen management software (the "The Company's digital database"). The overarching goal is to provide storage and preservation of specimens that is delivered through providing the software, equipment, and support services to the customer. Specifically, the following goods/services are provided:

- **Equipment (tank and initial consumables)**
  - The customer receives a set of hardware products including a vault tank, barcode labels, and other required materials and hardware designed to go along with the software and Robot Arm "Robotic automation system" which houses the patient specimen. Title and risk of loss of the tank transfers to the customer upon delivery.
- **Robot Tower and Radio Frequency Identification ("RFID") workstation (i.e., herein after referred to as the "Robotic automation system")**
  - The Robot Tower and radio frequency identification ("RFID") workstation includes the Robot as well as the specimen software management system used to track specimen within the vault tank.
  - The automation system raises and lowers the racks of specimen within the tank and retrieves the specimens as directed by the proprietary digital database software.
  - BEACONS ("Beacons") – hold DEVICES such as the vials that clinics put embryos/oocytes in storage for cryogenic conditions and provide identification via embedded RFID tab. BEACONS are put into the robots for use.
- **The Company's digital database software (SaaS)**
  - The proprietary digital database software is an operating system which integrates with all the robots and clinic's basic electronic medical record software ("EMRs"). The database software allows clinics to track and trace where patient's specimen is within the robot or outside the robot via the RFID tag on each beacon. When a clinic wants to retrieve a patient's beacon from the robot, or store a patient's beacon in the robot, they do so by creating a transaction (or ticket) with the database software. The Robot's software interface with the database software so that when the robot executes the tickets it can identify where the patient is located in the vault tank for retrieval, or where the specimen is to be

stored within the tank. Clinics use the database software to create a digital record of the patient's beacon which allows them to know exactly where the patient's beacon is located.

The below services listed are included as part of the Company's digital database software fees.

- **Emergency Response Service**
  - Should any incidents occur with any aspect of the robot's functionality, the Company will send personnel to fix the issues (either send someone onsite or assist via phone where possible).
- **24/7 Overwatch monitoring service**
  - The Company continually monitors all robots in the field to ensure no malfunctions of the equipment and will notify the clinic if anything were out of acceptable range.
- **Basic electronic medical record ("EMR") integration**
  - The Company integrates the database software with the clinics Electronic Medical Records ("EMR")
- **Bi-annual preventative maintenance**
  - The Company's third-party service provider performs annual maintenance of the robots on the anniversary of installation and field service engineers perform annual maintenance on the 6-month anniversary of installation. This includes checking for ice buildup and removal, monitoring battery life, appropriate greasing of parts, LN2 monitoring system is working appropriately. This service is included in the contract. The maintenance cannot be performed by anyone other than this service provider.
- **On-site repair**
  - Similar to the emergency response services but for lower risk issues. Should any incidents occur with any aspect of the platform, the Company will send personnel to fix the issues (either send someone onsite or assist via phone where possible).
- **Access to 24/7 client support**
  - The Company Network Operations serves as a call center with 24/7 assistance for client support.
- **Installation / construction services**

    - The Company will install the robot and if necessary, performs construction at the clinic site so that site can fit the robot. The contract period generally starts from date of signing and has a term of 5 years. However, billing does not commence until specimens are in the robots. Not all contracts require construction services. They would all require installation of the robots.
- **Specimen inventory preparation and analysis**
    - Prior to moving specimen from clinic tanks into the robots, the Company will audit the clinic's patient inventory list and match against physical specimen to ensure the only specimen being moved in the robots have patient IDs and records.
- **Specimen reformatting**
    - The Company's embryologists will assist clinic in moving specimen from clinic tanks into the robots.
- **Training**
    - The Company's embryologist train clinic embryologists on how to use the robot and the database software.

The Company purchases the equipment from an offshore vendor who ships the equipment including the Robot, the vault tank, and other hardware/consumable needed to the US for the Company to store until resold to a clinic. The purchased equipment is sold for $1 up front including the vault tank and initial consumables. The intent of this is to ensure safe keeping of all patient specimen within the tank. If the contract were to be terminated by the clinic or the Company, the clinic has the right to retain the tank, and all specimen stored within. While the customer has the right to keep the tank, there have been instances historically where a robot, including the tank, have been removed from the clinic location and returned to the Company's warehouse. While the customer owns the tank, there is no economic benefit of the tank standalone without the robot and Company's database software.

Separately, the Robotic Automation System is leased for $$$/month with the Company's database software subscription billed on a per patient per month basis for all additional services. The company bills and generates revenue/cash flow on a per patient per month basis based on the database software fee. The robot automation system raises and lowers racks of specimens within the tanks and the database software. It is specifically designed to interact with the tanks via the database software and cannot do anything without being installed with the tanks and database software. The clinic does not obtain an economic benefit from the robot arm. The clinic does

not have the right to direct how and for what purpose the asset is used throughout the period of use. The clinic can only use the robot to store IVF specimens. The clinics can choose when to use the robot including how many patients and what patients the system suits best.

ISSUE

The Company is looking to determine if the service offerings and charges to their customer listed above are deemed nontaxable in the state of Illinois for sales and use tax purposes. If any of the above is deemed taxable, the Company would need to understand the appropriate taxable base.

Additionally, the Company is looking to understand if there are any specific property tax implications imposed specifically on the Company for any of the above.

APPLICABLE LAW

The Illinois 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.[i] Gross receipts from sales or leases of tangible personal property at retail means the total selling price of the tangible personal property.[ii] The provision of a service in Illinois that is not accompanied by the transfer of tangible personal property is generally not subject to Retailers' Occupation Tax or Service Occupation Tax liability. The sale of service that is accompanied by a transfer of tangible personal property would be subject to liability under the Service Occupation Tax Act.[iii]

Specimen Storage and Monitoring Services

Illinois does not tax sales of service. Illinois does impose service occupation tax on items of tangible personal property transferred as an incident to sales of service.[iv] Room rentals, locker rentals, and storage facility rentals are not taxed.[v]

Software and Information/Data Related Services

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[i] *Ill. Adm. Code 130.101.*
[ii] *35 ILCS 120/1.*
[iii] *5 ILCS 115/3.*
[iv] *86 Ill. Adm. Code Part 140.*
[v] *Article 75 of Public Act 103-592.*

Software-as-a-service or software provided through a cloud-based delivery system in which computer software is never downloaded onto a client's computer and is only accessed remotely is not subject to tax.[vi] However, if a provider of such 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.[vii] 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.[viii]

Information or data that is electronically transferred or downloaded is not considered the transfer of tangible personal property.[ix] The Department 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.[x]

Installation, phone support, training, and seminars that do not require the transfer of tangible personal property to the recipients of those services are exempt if they are separately stated from the selling price of any taxable canned software.[xi] If computer software training or other support services are provided in conjunction with a sale of nontaxable computer software or a license of computer software, the charges for that training are not subject to tax.[xii]

Bundled/Mixed Transaction

A mixed transaction is when you have a service being performed that includes property being transferred to the purchaser. It is implied that the title or ownership of the transferred property goes to the recipient of the service. In mixed transactions the taxing authority typically looks at the true object test. The true object test is a subjective test to determine what it is the customer is really wanting to purchase, either service or property. It is an all or nothing test. This test looks at the reason or purpose the buyer entered into the transaction and what it is the buyer wanted to purchase. The taxing authority needs to determine whether the buyer wanted the service or the property. If the service is determined to be what the buyer wanted, then the taxation or

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[vi] *Illinois General Information Letter ST 20-0018-GIL.*
[vii] *86 Ill. Adm. Code 130.1935(a)(1).*
[viii] *86 Ill. Adm. Cod 130.1935.*
[ix] *86 Ill. Adm. Code 130.2105(a)(3).*
[x] *Illinois General Information Letter ST 20-0018-GIL*
[xi] *Section 130.1935(b).*
[xii] *ST-22-0023-GIL*

non-taxation of the service must be followed. If the property is determined to be what the buyer wanted, then the transaction is taxable in total. Taxing authorities also refer to the true object test as the 'real object test,' 'most important factor test,' 'basic purpose of the buyer test,' 'crucial element test' or 'essence of the transaction test.'[xiii]

Equipment

The Illinois 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.[xiv] To the extent that property is installed as fixtures permanently attached to the realty on which they are located, it is not considered tangible personal property and not be subject to the tax.[xv]

A sale or transfer of machinery and equipment used primarily in the process of manufacturing or assembling, either in an existing, an expanded or a new manufacturing facility, of tangible personal property for wholesale or retail sale or lease, whether such sale or lease is made directly by the manufacturer or by some other person, whether the materials used in the process are owned by the manufacturer or some other person, or whether such sale or lease is made apart from or as an incident to the seller's engaging in a service occupation is exempt from tax.[xvi] The manufacturing process is the production of articles of tangible personal property or assembling different articles of tangible personal property by procedures commonly regarded as manufacturing, processing, fabricating, or refining which changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant.[xvii] Production related tangible personal property that is primarily used or consumed in activities such as research and development, preproduction material handling, receiving, quality control, inventory control, storage, staging, and packaging for shipping and transportation purposes is exempt.[xviii]

[xiii] *Illinois General Information Letter ST 01-0091-GIL*
[xiv] *86 Ill. Adm. Code 130.101.*
[xv] *Illinois General Information Letter ST 09-0145-GIL*
[xvi] *35ILCS 110/2.*
[xvii] *86 Ill. Adm. Code 130.330.*
[xviii] *Illinois Informational Bulletin FY 2019-28*

Illinois has provided guidance that a taxpayer's machinery and equipment, including refrigeration equipment, qualified as a manufacturing process exempt from Retailer's Occupation Tax.[xix]

Stand-alone tangible personal property installation services and tangible personal property repair services are not subject to Illinois' retailers' occupation, service occupation, use, or service use taxes.[xx]

Leases

On and after January 1, 2025, for purposes of State and local retailers' occupation taxes, the term "sale" includes a lease.[xxi] For purposes of State and local service occupation taxes, the term "transfer" includes a lease.[xxii] Effective January 1, 2025, in accordance with the provisions of *Article 75 of Public Act 103-592*, persons engaged in the business of leasing tangible personal property at retail ("lessors") in Illinois are subject to State and local retailers' occupation tax on the gross receipts from leases of tangible personal property made in the course of business.[xxiii] A "lease" is defined as a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called, but does not include a lease entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee. The tax applies to lease receipts received on or after January 1, 2025, for leases in effect, entered into, or renewed on or after that date. For sales of service, the tax applies to tangible personal property transferred by lease by persons engaged in the business of making sales of service in which leases are in effect, entered into, or renewed on or after January 1, 2025[xxiv] *and*. [xxv] For retail leases and tangible personal property transferred by lease by persons engaged in the business of making sales of service, tax is due to the lessor's State and local retailers' occupation tax or service occupation tax rate based on where the lease is sourced.[xxvi] Gross receipts from sales or leases of tangible personal property at retail means the total selling price of the tangible personal property.[xxvii]

[xix] *Private Letter Ruling, ST 23-0003-PLR (June 2, 2023).*
[xx] *Ill. Admin. Code tit. 86, § 130.2015(c)(1).*
[xxi] *35 ILCS 120/1.*
[xxii] *35 ILCS 115/2.*
[xxiii] *35 ILCS 120/2.*
[xxiv] *35 ILCS 120/2.*
[xxv] *35 ILCS l 15/3.*
[xxvi] *35 ILCS 120/2-12(5.5).*
[xxvii] *35 ILCS 120/1.*

The tax on leases and rentals of tangible personal property does not extend to real property. To the extent that property is installed as fixtures permanently attached to the realty on which they are located, it is not considered tangible personal property, and the lease or rental of that property would not be subject to the tax on leases and rentals of tangible personal property *Article 75 of Public Act 103-592*.

When the provision of tangible personal property includes an operator for the tangible personal property for a fixed or indeterminate period, the arrangement may constitute a lease taxable under the Retailers' Occupation Tax Act. If the operator is necessary for the equipment to perform as designed and is responsible for more than maintaining, inspecting, or setting up the tangible personal property, the arrangement is not a lease. When a purchaser enters into such an agreement to use tangible personal property for a predetermined period, but an owner operator retains possession and control of the tangible personal property, such agreement does not constitute a lease. The customer may gain access to the benefit of the tangible personal property, but an owner operator remains in possession and control of the property throughout its use under the agreement. In this situation, the customer does not have the unfettered right to possess or control the tangible personal property, and the transaction does not include any taxable transfer of tangible personal property *Article 75 of Public Act 103-592*.

Property Tax

All real property is subject to property tax in Illinois.[xxviii] Personal property is not taxed in Illinois. This includes, manufacturing and industrial equipment, materials and employee-owned tools, computer equipment, hardware, and software, and business inventory is not taxed in Illinois.[xxix]

DISCUSSION

It is our understanding that the primary purpose of the Company's transactions with fertility clinics is to provide a secure and technologically advanced service for the management and storage of human reproductive specimens. Although certain tangible personal property – such as vault tanks and robotic automation systems – is transferred or leased as part of the arrangement, these items are ancillary to the core service offering. The Company's value lies in its integrated platform, which includes secure vault

[xxviii] *35 ILCS 200/9-95*.
[xxix] *35 ILCS 200/24-5*.

infrastructure, digital tracking and traceability via beacon technology and proprietary database software, and comprehensive customer support including emergency response capabilities.

The Company generates revenue on a per-patient, per-month basis through fees associated with access to its cloud-based database software, which is essential to the platform's operation. This software directs the robotic automation system to retrieve and place specimens within the vault tanks and is one of several components included in the database software fee. Separately, the robotic arm is leased for a nominal fee of $1 per month, and the vault tank is sold for $1 upfront to establish legal ownership by the clinic. These components are designed to function exclusively within the integrated system and have no independent utility or economic value outside of the provision of a specialized specimen management and retrieval service.

Taken together, the vault tank, robotic arm, and database software form a unified solution that enables clinics to store, preserve, and retrieve specimens efficiently and securely. Accordingly, the true object of the transaction is the provision of a specialized specimen management service, and the transfer of tangible personal property is incidental. Based on this characterization, the sales to clinics should be considered nontaxable under Massachusetts [sic] law.

The Company's customers are fertility clinics that engage its services for the secure management and storage of human reproductive specimens. The nominal $1 upfront charge for the vault tank and related consumables is intended to establish legal ownership of the tank by the clinic, ensuring that, in the event of contract termination, the clinic retains both the tank, and the specimens stored within. While there have been instances where the robotic system and tank were returned to the Company's warehouse, such actions underscore the limited standalone economic value of the vault tank outside the provision of a specialized specimen management and retrieval service.

The robotic automation system, leased to clinics for $1 per month, is designed to raise and lower specimen racks within the vault tank and facilitate specimen retrieval, as directed by the Company's proprietary database software. This robotic arm has no independent utility and is engineered specifically to operate in conjunction with the vault tank and database software. Its functionality is entirely dependent on the broader service offerings, and it cannot be repurposed or used outside of this context.

Accordingly, both the vault tank and robotic system serve as integral components of the Company's service offering but are incidental to the primary objective of providing secure specimen management. Their inclusion in the transaction supports the delivery of the service rather than constituting a separate table sale of tangible personal property. The real or true object of the transaction remains the provision of a specialized specimen management and retrieval service.

The Company offers multiple solution models – Offsite, In-Clinic, and Hybrid storage – demonstrating that the provision of tangible property is not a required element of the service. For example, offsite storage does not involve the transfer or lease of physical equipment, yet clinics still receive full access to the database software and specimen management services. This reinforces the position that the true object of the transaction is the provision of a nontaxable service related to the safekeeping and management of reproductive specimens. The inclusion of tangible property is merely supportive of the service and does not alter is fundamental nature.

CONCLUSION

We respectfully request that you confirm the implications surrounding the issues noted above for the Company's services offering regarding both sales and use taxes and property taxes. Pursuant to the Illinois Department of Revenues Voluntary Disclosure Program and with respect to the subject of the legal opinion request, the petitioner elects to reserve the right to apply for the Voluntary Disclosure Program.

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 taxes comprise what is commonly known as "sales" tax in Illinois.

Effective January 1, 2025, persons engaged in the business of leasing tangible personal property at retail ("lessors") in Illinois are subject to State and local retailers' occupation tax on the gross receipts from leases of tangible personal property made in the course of business. See 35 ILCS 120/2. A "lease" is defined as a transfer of the possession

or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called, but does not include a lease entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee. On and after January 1, 2025, for purposes of State and local retailers' occupation taxes, the term "sale" includes a lease. See 35 ILCS 120/1. This includes the extension of all exemptions from retailers' occupation tax and use tax to leases. See 35 ILCS 120/2-5. The tax applies to lease receipts received on or after January 1, 2025 for leases in effect, entered into, or renewed on or after that date. The lessor must remit for each tax return period the tax applicable to lease receipts received during that tax return period. See 35 ILCS 120/2.

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.

Effective January 1, 2025, persons engaged in the business of making sales of service are subject to State and local service occupation tax on all tangible personal property transferred by lease as an incident of a sale of service. See 35 ILCS 115/3. A "lease" is defined as a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed or indeterminate term for consideration, regardless of the name by which the transaction is called, but does not include a lease entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee. On and after January 1, 2025, for purposes of State and local service occupation taxes, the term "transfer" includes a lease. See 35 ILCS 115/2. The tax applies to tangible personal property transferred by lease by persons engaged in the business of making sales of service in which leases are in effect, entered into, or renewed on or after January 1, 2025. The serviceman who is a lessor must remit for each tax return period only the tax applicable to that part of the selling price actually received during such tax return period. See 35 ILCS 115/3.

Servicemen may calculate their tax base in one of four ways: (1) Service Occupation Tax on separately-stated selling price of tangible personal property transferred incident to service; (2) Service Occupation Tax on 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. See 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 for the tangible personal property subsequently transferred to their customers. 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 to be 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. See 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.

Cost Ratio

The cost ratio is a measure of the amount of tangible personal property transferred with a service. It is calculated by comparing the serviceman's product cost to total income from services. The cost of materials that are not transferred to customers incident to a service, such as those sold at retail, removed from inventory for use, or incorporated into repairs of real estate, must be excluded when determining the cost ratio. See 86 Ill. Adm. Code 140.105(c).

To calculate the cost price of the tangible personal property transferred by lease, a serviceman must first determine the useful life of the tangible personal property. The useful life is the useful life or recovery period allowed under federal law for like kind of property. See 86 Ill. Adm. Code 150.110. The serviceman must then divide the price initially paid to its supplier for the item by its useful life. Next, the serviceman must convert the cost price into whatever time period is used for the lease (e.g. years or months). The result is the cost price for each lease payment. Finally, the serviceman must multiply the cost price for each lease payment by the duration of the lease during the year to determine the annual product cost used to determine cost ratio.

This method to determine cost price for each rental payment must also be used in calculating Service Occupation Tax liability using the first three methods, as described above. This cost price is used as long as the serviceman transfers such tangible personal property by lease as an incident of a sale of service and is not limited to the useful life of the item. If the serviceman uses the fourth method, as stated above, however, they would pay Use Tax to the supplier of the leased tangible personal property.

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, compliers, 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 of 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 the customer to accept the license terms by checking a box or clicking "I agree". 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. 86 Ill. Adm. Code 130.1935(a)(1)(A)(ii). 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)(i).

Software as a Service

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, and is calculated as explained above.

Computer software is defined broadly in the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 130.1935(a); 35 ILCS 120/2-25. However, computer software provided through a cloud-based delivery system is not subject to tax. A cloud-based delivery system is one in which computer software is never downloaded onto a client's computer and only accessed remotely. 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. Tax owed would be calculated using one of the four Service Occupation Tax methods detailed above.

If an Illinois customer downloads computer software for free from an out-of-State retailer's web site 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. In this instance, the donor would not have made any taxable use of the property in Illinois. The customer, the donee, would incur no Use Tax liability for the retailer to collect and remit to Illinois. Illinois generally does not tax subscriptions of software-as-a-service

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 800-732-8866.

Very truly yours,

George L. Encarnacion, Jr.
Associate Counsel

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