

This letter concerns sales of advertising services. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

August 16, 2007

Dear Xxxxx:

This letter is in response to your letter dated January 25, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) 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 ('CORPORATION'), we respectfully request a General Information Letter from the Department on the sales tax consequences of the transactions described below. For the sole and limited purpose of this ruling request only, CORPORATION concedes that it has nexus for sales tax purposes in Illinois.

#### **FACTS**

CORPORATION is a provider of advertising services for automobile dealers across the United States, including automobile dealers located within Illinois. Specifically, CORPORATION provides credit-based marketing services whereby CORPORATION targets potential automobile purchasers for dealers. CORPORATION specializes in identifying individuals with sufficient credit histories and referring them to automobile dealers that may be able to provide financing for the purchase.

CORPORATION engages in three advertising programs designed to generate a high-volume of potential customers for dealers: direct mail advertising, television advertising, and web based advertising. All of CORPORATION's advertising is one under CORPORATION's name. CORPORATION's advertising does not reference any specific dealers.

## ***Direct Mail Advertising***

CORPORATION uses direct mail marketing as a means to solicit potential automobile purchasers for its dealer customers. The direct mailing is designed to target individuals with sufficient credit ratings that are interested in obtaining financing for an automobile purchase.

CORPORATION identifies potential candidates for the direct mail by purchasing a list of addresses from a credit reporting agency that meet certain credit parameters. CORPORATION then provides the list to a third-party direct mail printer in Ohio. The printer produces a letter and an envelope for CORPORATION according to CORPORATION's specifications and delivers them by first class U.S. mail to the names and addresses provided by CORPORATION. The letter contains CORPORATION's name and a brief description of CORPORATION's services but does not reference any specific automobile dealer. CORPORATION is the purchaser of the direct mail and title to the direct mail does not pass to any dealer. The printer invoices CORPORATION for printing, stationery, and postage costs incurred in producing and delivering the letter.

CORPORATION's letter informs the recipient that the individual has been pre-selected to receive an offer of credit towards the purchase of a new or used car, truck, or SUV. The letter instructs the recipient to call CORPORATION's 1-800 number for more information on the offer. The letter also contains a disclaimer that the eventual approval of credit is contingent on verification of the recipient's employment, income level and other credit obligations.

The 1-800 number connects the caller with CORPORATION's call center, located outside of Illinois. A CORPORATION call center representative interviews the caller to verify the caller's address, place of employment, income level and any co-signer information and schedules an appointment for the caller to visit a CORPORATION affiliated dealership located in the caller's area. From there, negotiations proceed between the individual and the dealer for the purchase and financing of an automobile.

## ***Television Advertising***

In addition to direct mail, CORPORATION identifies potential customers and referrals for automobile dealers through television advertisements. CORPORATION runs television commercials inviting individuals to call CORPORATION's 1-800 number for assistance in obtaining automobile financing. The television ads do not reference any specific automobile dealer. As with direct mail, the 1-800 number connects the caller with CORPORATION's call center. A CORPORATION call center representative interviews the caller as described above and makes a referral to a CORPORATION affiliated dealer in the caller's area.

## ***Internet Advertising***

CORPORATION also identifies potential customers over the internet via online applications. CORPORATION has strategic partners that aggregate internet shoppers for CORPORATION either through their own websites or via a link to CORPORATION's website. The individual completes an online application on the website to provide contact, employment and income information. CORPORATION forwards this information to a CORPORATION affiliated dealer who will follow up on the lead.

## **Pricing**

Dealers pay a flat, monthly fee for CORPORATION's advertising and marketing services. The pricing for CORPORATION's services is based on the quality and quantity of potential customers the dealer would like to receive. When CORPORATION provides a dealer with a potential customer, the dealer does not necessarily know which form of advertising was used to generate the lead.

## **QUESTIONS PRESENTED**

CORPORATION respectfully requests that the Department provide a ruling and analysis on the following questions based on the transactions described above. Again, for the sole and limited purpose of this ruling request, CORPORATION concedes that it has nexus with Illinois for sales tax purposes.

- I. Must CORPORATION collect Illinois sales tax from Illinois automobile dealers on fees charged for its advertising and marketing services?
- II. Alternatively, must CORPORATION remit Illinois use tax on the cost of direct mail letters and envelopes sent to individuals within Illinois? If so, what CORPORATION costs are subject to the tax?

## **ANALYSIS**

Illinois impose [sic] a Retailer's Occupation Tax ('ROT') on persons engaged in the business of making retail sales of tangible personal property in the state. See 35 ILCS 120/2. ROT is similar to sales tax in most states and is measured by the 'gross receipts' received by the retailer on the sale of tangible personal property. Illinois also imposes a Service Occupation Tax ('SOT') on service providers that transfer tangible personal property incidental to the provision of the service. SOT is imposed only on the selling price of tangible personal property transferred by the service provider rather than on the receipts from the service itself. Illinois's complementary use tax is imposed on the privilege of using tangible personal property purchased at retail anywhere within the state. See 86 Ill. Adm. Code 150.101.

Illinois defines selling at retail as any transfer of tangible personal property for consideration. See 35 ILCS 105/2. Transactions that lack a transfer of tangible personal property are generally not subject to tax.

CORPORATION is in the business of providing advertising and marketing services for automobile dealers in Illinois and across the country. CORPORATION earns a fee for the service of identifying and referring potential purchasers to automobile dealers. CORPORATION is a service provider and is not engaged in selling tangible personal property. Therefore, the fees from CORPORATION's credit based marketing and advertising services should not be subject to Illinois ROT or SOT.

In addition, it would appear that CORPORATION's direct mail letter and supplies are not subject to Illinois use tax. In Illinois, use tax is imposed on the privilege of using tangible personal property purchased at retail anywhere within the state. Illinois defines 'use' as the exercise by any person of any right or power over tangible personal property incidental to the ownership of that property the exercise of any right or power over tangible personal. [sic] See 35 ILCS 105/2.

CORPORATION's order for the direct mail is filled outside of Illinois by Ohio print shop. The printing of the letter takes place in Ohio. All of the direct mail is shipped directly from the printer through US mail to individuals in Illinois at no cost to the recipient. CORPORATION does not take possession to the direct mail in Illinois or exercise any control or right or power over the materials in Illinois. Thus, CORPORATION cannot have been said to exercise sufficient control over the property to constitute at [sic] taxable use of the property in Illinois.

## **CONCLUSION**

CORPORATION is in the business of providing marketing and advertising services for automobile dealers in Illinois and across the country. CORPORATION is a service provider and is not engaged in the sale of tangible personal property. Therefore, we respectfully request that the Department issue a general information letter confirming that the transactions described above are not subject to sales and use tax.

Your attention to this matter is greatly appreciated. If you have any questions or if there is anything I can clarify for you, please do not hesitate to call me.

## **DEPARTMENT'S RESPONSE:**

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

If no tangible personal property is transferred incident to a sale of service, no Service Occupation Tax liability or Use Tax liability will be incurred. Generally, the sale of television advertising and Internet advertising do not involve the transfer of tangible personal property and no Service Occupation Tax liability or Use Tax liability will be incurred.

However, direct mail advertising services normally involved the transfer of tangible personal property incident to the sale of those services. 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. 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 servicemen's entire bill;

- (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or
- (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. 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. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction-by-transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen also collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

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. 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 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.

When a serviceman contracts out all or a portion of the service that he will provide, he is acting as a primary serviceman in a multi-service situation. As a primary serviceman, he engages the services of a secondary serviceman in order to obtain part or all of the product and services desired by the service customer. Depending upon whether the primary and secondary servicemen are registered or de minimis will determine at what point Service Occupation Tax or Use Tax will be incurred. Please see 86 Ill. Adm. Code 140.145 to determine the tax incurred in these situations.

Please see general information letter (ST 04-0200-GIL) that is available on the Department's website describing the Department's position for printed materials "used" outside Illinois and then placed for mailing by mail or common carrier outside Illinois for delivery into Illinois, and during which the serviceman loses the ability to exercise control over the printed materials (e.g., to recall the materials). Generally, in the situations described in that letter, a serviceman would not incur Use Tax or Service Use Tax liability if the serviceman does not retain the ability to exercise control over the shipment of the printed materials after entry into Illinois.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton  
Senior Counsel, Sales & Excise Taxes

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