

This letter explains the Service Occupation Tax and the Service Use Tax. See 86 Ill. Adm. Code 140.101 through 140.109 and 160.101 regarding sales of service. (This is a GIL.)

July 27, 2015

Dear Ms. XXXX:

This letter is in response to your letter dated July 2, 2015, 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.tax.illinois.gov](http://www.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:

We are seeking a letter ruling on whether or not our client’s fees for the distribution of door hangers (which are distributing for advertising and marketing purposes) and the door hangers themselves are subject to tax.

**Facts**

Our client, whose business is based in CITY, STATE sells door hangers and distributes them to door to door to residential neighborhoods on behalf of their customers, for advertising and marketing purposes.

The customer submits finished artwork, digitally to our client. Our client then submits the artwork, digitally, to their printer. The printer prints the door hangers and ships them to our client’s distribution team, which will be located in your state. Our client then has their distribution team distribute door hangers door to door to residential neighborhoods for advertising and marketing purposes. Our client bills their customer for the printing and the distribution. (See sample door hanger attached)

We respectfully request a written determination of the following: (Please assume that we have nexus in your state when making your determination.)

1. Are these door hangers subject to tax? In other words, would we be responsible for charging our customer tax on the door hangers?
2. Are the distribution fees for distributing the door hangers subject to tax?
3. We bill our customers for one lump sum fee for both the printing of the door hangers and the distribution fees for distributing the door hangers. Would the

taxability be any different if we separately stated the distribution fees from the printing fees (or door hangers) on our invoices to our customers?

Our client does not currently have nexus in your state. However, they anticipate entering your state in the near future. As such, if you could expedite your response it would be greatly appreciated.

If you have any questions prior to the issuance of the letter ruling please email me at NAME@COMPANY.com or call me at the above listed number. Thank you for your consideration to these matters.

#### **DEPARTMENT'S RESPONSE:**

We cannot provide you with a specific answer to your questions without reviewing your client's specific contractual obligations with the printer and the customer. In addition, without knowing the registration status of the servicemen involved, the Department is without sufficient information to provide you with a specific response. However, I hope the following information regarding Retailers' Occupation Tax, Use Tax, Service Occupation Tax and Service Use Tax are helpful.

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 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. See 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These 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. 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. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

Retailers' Occupation and Use Taxes do not apply to sales of service. The Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If the transactions you are inquiring about do not involve the transfer of any tangible personal property to your company, then they generally would not be subject to Service Occupation Tax, or Service Use Tax.

The scenario you have described is considered a service transaction that may result in your client's obligation to either collect Service Use Tax or remit Use Tax. For general information, see 86 Ill. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

Although there is no Service Occupation Tax liability when sales do not occur in Illinois, a serviceman with nexus such as the presence of employees or representatives in Illinois, may either incur the obligation to collect Service Use Tax from his customers or may incur Use Tax liability himself. The amount of tax that must be collected or paid is equivalent to the amount calculated as explained below. A serviceman's liability may be calculated in one of four ways: 1. Separately stated selling price of tangible personal property transferred incident to service; 2. 50% of the serviceman's entire bill; 3. Service Occupation Tax on the serviceman's cost price if he is a registered de minimis

serviceman; or, 4. Use Tax on the serviceman's cost price if he is a de minimis serviceman 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 price 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 serviceman's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106. These methods result in the customer incurring a corresponding Service Use Tax liability. See 86 Ill. Adm. Code 160.101.

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 incident to 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 do not 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. This method also results in the customer incurring a corresponding Service Use Tax liability.

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 may handle their tax liability by paying Use Tax to their suppliers on the cost price of the tangible personal property they transfer in Illinois incident to sales of service. 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. Under this method the customer incurs no Service Tax liability.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Cara Bishop  
Associate Counsel