

Sales/Use/Indirect:

Illinois Private Letter Rulings Address Taxability of Online and Mobile Application Access to Software

Private Letter Ruling ST 24-0002-PLR, Ill. Dept. of Rev. (9/17/24); *Private Letter Ruling ST 24-0003-PLR*, Ill. Dept. of Rev. (9/26/24). In two separate private letter rulings involving two companies providing users access to certain health/wellness and lab testing information, respectively, hosted in the cloud on out-of-state servers through a web portal or by a downloaded application onto mobile cell phones or other electronic mobile devices, the Illinois Department of Revenue (Department) generally concluded that based on the provided facts, the services are *not* subject to Illinois retailers' occupation tax (ROT) as the customers do *not* receive any tangible personal property in exchange for consideration.

URL:
<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2024/ST24-0002-PLR.pdf>

URL:
<https://tax.illinois.gov/content/dam/soi/en/web/tax/research/legalinformation/lett rulings/st/documents/2024/ST24-0003-PLR.pdf>

The rulings also explain that in Illinois, a provider of software as a service (SaaS) is acting as a “serviceman” and as a serviceman, the seller does not incur ROT. Instead, Illinois’ service occupation tax (SOT) 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. Furthermore, if a provider of a service (*i.e.*, SaaS) provides an “API,” applet, desktop agent, or a remote access agent to enable the subscriber to access the provider’s network and services, the subscriber may be receiving computer software. Although there may not be a separate charge to the subscriber for the computer software, it is nonetheless subject to the SOT, unless the transfer qualifies as a nontaxable license of computer software. Under Illinois’ SOT Act, a serviceman is taxed on tangible personal property transferred incident to a sale of service, and the transfer of tangible personal property to service customers may result in either SOT or Illinois use tax liability for servicemen, depending upon which tax base they choose to calculate their liability. The rulings also note that computer software provided through a cloud-based delivery system – a system in which computer software is never downloaded onto a client’s computer and is only accessed remotely – is not subject to tax. Please contact us with any questions.

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