

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2013-07ST
October 1, 2015

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ISSUES

Sales and Use Tax - Electronic Summary Reports

Taxpayer is seeking an opinion as to whether Taxpayer's products are services that are not subject to the Indiana sales and use tax.

Authority: [IC 6-2.5-1-24](#); [IC 6-2.5-1-26.5](#); [IC 6-2.5-1-27](#); [IC 6-2.5-1-27.5](#); [IC 6-2.5-1-28.5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-6](#); [IC 6-2.5-4-16.4](#); [45 IAC 2.2-1-1](#); [45 IAC 2.2-4-2](#); Streamlined Sales and Use Tax Agreement (Oct. 8, 2014)

STATEMENT OF FACTS

Taxpayer ("Company") is a Georgia corporation. Company provides the following descriptions regarding its business:

- [Company] compiles information at the request of its customers. Information is gathered from various official sources such as FBI and Government databases, courthouse records, and education institutions.
- Information gathered or compiled at the customer's request is specific for that customer only and not available to the general public. The customer does not access databases or run searches themselves or otherwise reconfigure the results.
- Summary reports are delivered to the customer via a secure [Company] website.
- [Company] does not charge a fee for access to the website.

...

[Company] provides employment and residential screening services. These services consist of background checks, employment verifications, education verifications, fingerprinting services and other related services. The secure [Company] website enables customers to only access the data specifically compiled and provided for that customer. The customers do not have the ability to search databases or otherwise reconfigure the results of the Services [Company] has performed. [Company] does not charge a separate or specific fee for the delivery of the results of the Services provided.

...

To perform its services, [Company] gathers and compiles information and provides the results of its research to the customer via a secure [Company] website. The [Company] website is the only means by which [Company]'s customer's access the information provided. [Company] does not provide deliverables in the form of paper copies, storage discs, or any other form of tangible physical medium.

DISCUSSION

Based on the foregoing facts, Taxpayer requests a ruling as to whether its product is exempt from sales and use tax as services.

Pursuant to [IC 6-2.5-2-1\(a\)](#) and [IC 6-2.5-2-2\(a\)](#), sales tax is imposed on retail transactions made in Indiana. A retail transaction is defined in [IC 6-2.5-4-1\(b\)](#) as the transfer, in the ordinary course of business, of tangible personal property for consideration. [IC 6-2.5-4-1\(c\)](#) goes on to provide in pertinent part:

For purposes of determining what constitutes selling at retail, it does not matter whether:

...

(2) the property is transferred alone or in conjunction with other property or services . . .

"Tangible personal property" is defined in [IC 6-2.5-1-27](#) as:

. . . personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

Except for certain enumerated services, sales of services generally are not retail transactions and are not subject to sales or use tax. [45 IAC 2.2-4-2](#) clarifies the taxability of services as follows:

(a) Professional services, personal services, and services in respect to property not owned by the person rendering such services are not "transactions of a retail merchant constituting selling at retail", and are not subject to gross retail tax. Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:

- (1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;
- (2) The tangible personal property purchased is used or consumed as a necessary incident to the service;
- (3) The price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and
- (4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

(b) Services performed or work done in respect to property and performed prior to delivery to be sold by a retail merchant must however, be included in taxable gross receipts of the retail merchant.

(c) Persons engaging in repair services are servicemen with respect to the services which they render and retail merchants at retail with respect to repair or replacement parts sold.

(d) A serviceman occupationally engaged in rendering professional, personal or other services will be presumed to be a retail merchant selling at retail with respect to any tangible personal property sold by him, whether or not the tangible personal property is sold in the course of rendering such services. If, however, the transaction satisfies the four (4) requirements set forth in [subsection (a)], the gross retail tax shall not apply to such transaction.

A unitary transaction is clarified in [45 IAC 2.2-1-1\(a\)](#) as follows:

Unitary Transaction. For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

Sales of specified digital products are also included in the definition of retail transactions. [IC 6-2.5-4-16.4\(b\)](#) provides that a person engages in making a retail transaction when the person (1) electronically transfers specified digital products to an end user; and (2) grants to the end user the right of permanent use of the specified digital products that is not conditioned upon continued payment by the purchaser. "Specified digital products," as currently defined by [IC 6-2.5-1-26.5](#), include only digital audio works (e.g., songs, spoken word recordings, ringtones), digital audiovisual works (e.g., movies), and digital books. Products "transferred electronically" are defined at [IC 6-2.5-1-28.5](#) to mean products that are "obtained by a purchaser by means other than tangible storage media."

Pursuant to Section 333 ("Use of Specified Digital Products," effective Jan. 1, 2010) of the Streamlined Sales and Use Tax Agreement ("SSUTA," effective Oct. 8, 2014), of which Indiana is a signatory, "A member state shall not include any product transferred electronically in its definition of 'tangible personal property.'" Pursuant to the same section of the SSUTA, "ancillary services," "computer software," and "telecommunication services" are excluded from the term "products transferred electronically."

In order to stay in conformity with the SSUTA, Indiana may not impose sales tax on a product transferred electronically by basing the product's taxability on inclusion of the product in the definition of tangible personal property. It is important to note that "ancillary services," "computer software," and "telecommunication services" are not restricted by the phrase "product transferred electronically." However, [IC 6-2.5-1-27.5\(c\)\(8\)](#) explicitly excludes ancillary services from the definition of telecommunication services, which are taxable under [IC 6-2.5-4-6](#). Accordingly, ancillary services are not subject to sales tax in Indiana.

Based on the foregoing, Indiana may impose sales tax on products transferred electronically only if the products meet the definition of specified digital products, pre-written computer software, or telecommunication services.

"Prewritten computer software" is defined in [IC 6-2.5-1-24](#) as follows:

Subject to the following provisions, "prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser:

- (1) The combining of two (2) or more prewritten computer software programs or prewritten parts of the programs does not cause the combination to be other than prewritten computer software.
- (2) Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser.
- (3) If a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.
- (4) Prewritten computer software or a prewritten part of the software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such a modification or enhancement, the modification or enhancement is not prewritten computer software.

"Telecommunication services" is defined in [IC 6-2.5-1-27.5](#) as follows:

- (a) "Telecommunication services" means electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.
- (b) The term includes a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing regardless of whether the service:
 - (1) is referred to as voice over Internet protocol services; or
 - (2) is classified by the Federal Communications Commission as enhanced or value added.
- (c) The term does not include the following:
 - (1) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information.
 - (2) Installation or maintenance of wiring or equipment on a customer's premises.
 - (3) Tangible personal property.
 - (4) Advertising, including but not limited to directory advertising.
 - (5) Billing and collection services provided to third parties.
 - (6) Internet access service.
 - (7) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of the services by the programming service provider. Radio and television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3.
 - (8) Ancillary services.
 - (9) Digital products delivered electronically, including the following:
 - (A) Software.
 - (B) Music.
 - (C) Video.
 - (D) Reading materials.
 - (E) Ring tones.

The question is whether the electronically delivered summary reports constitutes a transfer of tangible personal property, specified digital products, prewritten computer software, or telecommunication services. As mentioned above, the summary report is electronically delivered to customers via Taxpayer's website.

Customers typically pay a fee to Taxpayer for each summary report. Customers submit specific information to Taxpayer, and Taxpayer produces a customized response. The summary report would not fit under the definition of a "specified digital product," as it does not constitute a digital audio work, a digital audiovisual work, or a digital book. It would also not fit within the definition of "telecommunication service" or "computer software." The customized response is not for sale to the public as a "canned" report.

Sales Tax Information Bulletin 8 (November 2011) provides the following:

The sale of statistical reports, graphs, diagrams, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as they are so produced is considered to be the sale of tangible personal property unless the information from which such reports was compiled was furnished by the same person to whom the finished report is sold. The charge for reports compiled by a computer exclusively from data furnished by the same person for whom the data is prepared is considered to be for a service and is not subject to sales or use tax unless it is part of a unitary transaction subject to sales or use tax.

Note: When statistical reports, graphs, diagrams, or any other information produced or compiled by a computer are transferred electronically to a customer, the transaction is not subject to sales tax. For more information on the application of Indiana sales tax to products transferred electronically, please refer to Section III below or Commissioner's Directive #41, available online at www.in.gov/dor/3617.htm.

Commissioner's Directive #41 further clarifies that:

Prior to the publication of this document, the department imposed sales and use tax on products transferred electronically based on whether the products were taxable in their tangible forms. However, to achieve compliance with the Streamlined Sales and Use Tax Agreement on a going-forward basis, the department may impose sales and use tax on products transferred electronically only if the products meet the definition of specified digital products, prewritten computer software, or telecommunication services.

Items transferred electronically are not subject to sales or use tax unless the products meet the definition of specified digital products, prewritten computer software, or telecommunication services. Since the summary reports would not be considered specified digital products, prewritten computer software, or telecommunication services, they are not subject to sales or use tax.

Company's employment and residential screening services are not provided in conjunction with the transfer of tangible personal property delivered in a tangible medium. Therefore, Taxpayer's fee for the summary reports is not subject to Indiana sales or use tax.

RULING

Taxpayer's summary reports are delivered electronically, and therefore Taxpayer's employment and residential screening services are not subject to Indiana sales and use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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