

The Department's regulation at 86 Ill. Adm. Code 495.140(a) provides that *[o]n and after January 1, 2001, prepaid telephone calling arrangements shall not be considered telecommunications subject to the Telecommunications Excise Tax.* (Sections 3 and 4 of the Act). (This is a GIL.)

March 28, 2006

Dear Xxxxx:

This letter is in response to your letter dated August 11, 2005, 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 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:

FIRM is submitting the following General Information Letter ('GIL') request on behalf of an unnamed client; Company Y (hereinafter, 'Y' or the 'Company'). We had previously requested a GIL on behalf of Y in July 1997; the response, ST 97-0607-GIL, dated December 26, 1997 (copy enclosed) provided general information on the taxability of telecommunications.

Considering that Illinois tax laws related to telecommunications have changed in the years following that letter, Y is requesting that the Department of Revenue revisit this issue by responding with updated information regarding the following issues:

ISSUES

1. Are Y's services subject to the Illinois Telecommunications Excise Tax?
2. Are Y's services subject to the Illinois sales and use tax?
3. Would the services provided by Y be considered a 'prepaid telephone calling arrangement' subject to Illinois sales and use tax?

BACKGROUND

Y is a corporation that provides interpersonal companionship services to individual customers, nationwide. Some of its customers are located in the State of Illinois. Y provides its services through the use of an Interactive Voice Response (IVR) system that provides customers with telephone access to services at the option of the caller. The IVR system is comprised of computer hardware and software, which is physically located in Illinois.

Simply stated, Y is providing its customers with the opportunity to communicate with other like-minded individuals (via 'live chat' or recorded messages) through the telephone, and to review and compile information about these individuals, in order to make decisions about whether or not to physically interact with them in the future.

Y's service allows a customer to record and retrieve messages left in personal voice mailboxes (i.e., telephone personal ads). This service also offers the following advanced features or options:

- Friend Finder;
- Call Forwarding;
- Message Paging;
- Bookmarking, and
- Live Chat.

Y advertises for these services, along with a selection of top personal advertisements, in various newspapers or other media.

To use the services, customers purchase blocks of time from Y. The customer purchases the time through an advertised 900 number, a local number, or by mailing a money order to Y's offices located outside of Illinois. Purchases made through the 900 number are charged to the customer's telephone bill. Any pertinent sales tax due on purchases of prepaid services through the 900 number payment option would be assessed on the customer's telephone bill, and collected and remitted by the customer's local telephone service provider. For the other options, the customers can make payments by credit card, bank draft, or money order. The customer is then given a local telephone number to access the services.

In summary, based upon our discussions with Y personnel, and other information provided by the Company, it can be reasonably concluded that the following services are all integrated parts of the interpersonal companionship service provided by Y:

- 1-900 type services;
- Call forwarding, voicemail and messaging, answering services, and other interactive features;
- Information retrieval and storage, and
- Data processing.

Since the charges for the individual services (i.e., voicemail, information services, and/or computer services) provided are not separately stated, it is not possible to segregate nontaxable services from potentially taxable services.

GIL REQUEST

We request a GIL from the Illinois Department of Revenue providing information regarding the aforementioned issues related to the taxability of interpersonal companionship services provided by Company Y.

If you have any additional questions regarding this GIL request, please do not hesitate to contact me.

DEPARTMENT'S RESPONSE

The Department's regulations for the Telecommunication Excise Tax are set forth at 86 Ill. Adm. Code Part 495. Section 495.100 regarding the Meaning of "Gross Charges" addresses the taxation of many of the services you mention. Also, the information provided in ST 97-0607-GIL is still correct.

The Department's regulation at 86 Ill. Adm. Code 495.140(a) provides that *[o]n and after January 1, 2001, prepaid telephone calling arrangements shall not be considered telecommunications subject to the Telecommunications Excise Tax. (Sections 3 and 4 of the Act) "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 630]. "Prepaid telephone calling arrangement" does not include an arrangement whereby a customer purchases a payment card and pursuant to which the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. (Section 2 of the Act)*

It is not clear to us what services are being sold via the 900 number. (For general information regarding 900 numbers subject to the Telecommunications Excise Tax, we refer you to the Department's regulations at 86 Ill. Adm. Code 495.100.) If the services being sold do not include telecommunications, the charges for these services are not subject to tax. If the services sold include telecommunications, the charges for these telecommunications services are subject to tax. If the telecommunications charges are not disaggregated from other service charges, the full amount is subject to tax. Generally, the purchase of blocks of time (minutes, etc.) before the telecommunications are provided would be considered prepaid telephone calling arrangements and would be subject to sales tax rather than Telecommunications Excise Tax.

I hope this information is helpful. If you require additional information, please visit our website at 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,

Martha P. Mote
Associate Counsel

MPM:msk