

The Federal government is exempt from the Gas Revenue Tax, the Public Utilities Tax, the Telecommunications Excise Tax and the Electricity Excise Tax. See 86 Ill. Adm. Code 470.160 and 510.160, 35 ILCS 630/2 and 35 ILCS 640/1 et seq. (This is a GIL.)

August 27, 2007

Dear Xxxxx:

This letter is in response to your letter dated April 10, 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 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:

I am writing on behalf of the Chapters and Service Regions of the ABC of Illinois. This letter is to seek a legal opinion and or legal ruling as it pertains to Tax Exempt Status of the ABC.

In a 1996 Private Letter Ruling, pursuant to 2 Ill. Adm. Code 1200, the Department wrote 'The Department considers the XYZ to be an unincorporated instrumentality of the Federal government. Therefore, the XYZ is exempt from the payment of taxes under the Gas Revenue Tax Act and the Public Utilities Revenue Act.'

According to the utility bill the ABC is being charged a state tax and a municipal tax. The ABC is also being charged a tax for telecommunication services. Please see the attached bills for review.

A legal ruling by the Department of Revenue will be of great assistance in determining what the legal obligations will be for the Chapters and Service Regions of the ABC of Illinois. If a ruling is determined that the XYZ is exempt from said tax what then is our course of action to reclaiming previously paid taxes.

I look forward to hearing from you. If I can be of further assistance please do not hesitate to contact me.

DEPARTMENT'S RESPONSE

You are correct. In GIL ST 96-0278, the Department stated that “[t]he Department considers the XYZ to be an unincorporated instrumentality of the Federal Government.” The Department also stated that under the Gas Revenue Tax Act and the Public Utilities Revenue Act, sellers are not liable for tax with respect to their receipts from gas and electricity distributed, supplied, furnished or sold to the United States Government, its unincorporated departments, agencies or instrumentalities. See 86 Ill. Adm. Code 470.160 and 86 Ill. Adm. Code 510.160.

Then, in 2001, in GIL ST 01-0070, the Department explained that under the Telecommunications Excise Tax, the only purchasers who can purchase telecommunications tax-free are the State and Federal governments, State Universities created by statute, and wholly owned corporate subsidiaries purchasing from the parent or other wholly owned subsidiary. See 35 ILCS 630/2.

As an update, the tax imposed under Section 2 of the Public Utilities Revenue Act was replaced by the Electricity Excise Tax Law. The Electricity Excise Tax Law (35 ILCS 640/1 et seq.) imposes a tax upon the privilege of using in this State electricity purchased for use or consumption and not for resale, other than by municipal corporations owning and operating a local transportation system for public service. The incidence of the Electricity Excise Tax is on the consumers. As a result, the Department believes that sales to the Federal Government are not taxable under the Electricity Excise Tax Law by virtue of the Supremacy Clause of the United States Constitution. This is supported by the definition of the term “person” (and by reference for the term “purchaser”) in Section 2-3 of the Electricity Excise Tax Law that fails to reference the Federal Government but does specifically reference “any city, town, village, county, or other political subdivision of this State.” See GIL ST 01-0180.

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

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