

The COMPANY is exempt from the Telecommunications Excise Tax Act, the Telecommunications Infrastructure Maintenance Fee Act, and the Simplified Municipal Telecommunications Tax Act. See STATUTE. (This is a PLR.)

October 6, 2009

Dear Xxxxx:

This letter is in response to your letters dated January 14, 2009, and July 9, 2009, in which you request a Private Letter Ruling. 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 to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter dated January 14, 2009, you have stated and made inquiry as follows:

COMPANY is requesting a Private Letter Ruling regarding the following issue:

Is the COMPANY exempt from the Illinois Telecommunications Excise Tax, 35 ILCS 630/1 et seq., (the ‘Telecommunications Tax’)?

Neither an audit nor litigation is pending with the Department of Revenue. Furthermore, to the best of the COMPANY's knowledge, the Department of Revenue has not previously ruled on the instant issue or a similar issue.

The COMPANY is a political subdivision, body politic, and municipal corporation created under STATUTE, et seq. (ACT) and is exempt by statute from taxes, registration, and license fees.

The COMPANY shall be exempt from all state, county, municipal and other units of local government taxes and registration and license

fees, other than as required for motor vehicle registration in accordance with 'The Illinois Vehicle Code', as now or hereafter amended. All property of the Authority is declared to be public property devoted to an essential public and governmental purpose and shall be exempt from all taxes and special assessments of the State, any subdivision thereof, or any unit of local government.

STATUTE (emphasis added)

Although the ACT indicates that the COMPANY is exempt from taxes such as the Telecommunications Tax, telephone companies continue to impose the Telecommunications Tax on the COMPANY. Consequently, the COMPANY is now seeking clarification as to whether it is exempt from the Telecommunications Tax.

Earlier this year, the COMPANY contacted the Excise Taxes Division of the Illinois Department of Revenue, and the Division gave the informal opinion that based upon the text of the ACT, the COMPANY is exempt from the Telecommunications Tax. The Excise Taxes Division then suggested that the COMPANY seek a binding opinion from the Legal Division.

The Telecommunications Tax contains the following exemption clause:

The exemption for State Governments and State universities created by statute extends only to telecommunications purchased by such entities for their own use. Such entities are not exempt from the obligation to collect and remit tax on sales of telecommunications to others when they act as retailers of telecommunications. For example, a university would be exempt from Telecommunications Excise Tax on purchases, by the university, of telecommunications services for use by its faculty and staff in the course of their duties. However, the same university would have an obligation to collect and remit tax on sales of telecommunications services to students in university dormitories.

86 ILAC § 495.105. In this case, the COMPANY is purchasing telecommunications for its own use; the COMPANY is not acting as a retailer of telecommunications. The services are an integral part of the COMPANY's daily operations as a public mass transit system. Although the Telecommunications Tax exemption does not explicitly recite that it applies to an entity such as the COMPANY, the ACT nevertheless exempts COMPANY from all state taxes regardless of whether a tax contains an explicit exemption.

Therefore, the COMPANY would appreciate a Private Letter Ruling clarifying whether the COMPANY is exempt from the Illinois Telecommunications Excise Tax.

Thank you.

In your letter dated July 9, 2009, you have stated and made inquiry as follows:

Per your recommendation, please allow this letter to serve as a supplement to the COMPANY's ('COMPANY') January 14, 2009 request for a Private Letter Ruling regarding whether the COMPANY [sic] exempt from the Illinois Telecommunications

Excise Tax, 35 ILCS 630/1 *et seq.* **The COMPANY is also requesting that the Legal Division issue a ruling as to whether the COMPANY is also exempt from the Telecommunications Infrastructure Maintenance Fee, 35 ILCS 635/1 *et seq.***

For the identical reasons articulated in the January 14, 2009 request, the COMPANY may also be exempt from the Telecommunications Infrastructure Maintenance Fee. A copy of the original January 14, 2009 request is included for reference.

If further information is needed to make this additional assessment, please contact me.

Thank you for your assistance.

DEPARTMENT'S RULING:

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. 35 ILCS 630/3 and 630/4. "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration to persons other than the Federal and State governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries for their use or consumption and not for resale. 35 ILCS 630/2.

The Telecommunications Infrastructure Maintenance Fee Act imposes a State infrastructure maintenance fee upon telecommunications retailers equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State. 35 ILCS 635/15(b). A telecommunications retailer shall charge each customer an additional charge equal to the State infrastructure maintenance fee attributable to that customer's service address. Such additional charge shall be shown separately on the bill to each customer. 35 ILCS 635/25(a).

The COMPANY is a municipal corporation. STATUTE. Accordingly, for purposes of the Telecommunications Excise Tax, the COMPANY is not part of State government. As a result, it is not exempt from the Telecommunications Excise Tax by virtue of any language or exemption contained within the Telecommunications Excise Tax Act or the Telecommunications Infrastructure Maintenance Fee Act.

Section # of the ACT states:

"The Authority shall be exempt from all state, county, municipal and other units of local government taxes and registration and license fees, other than as required for motor vehicle registration in accordance with "The Illinois Vehicle Code", as now or hereafter amended. All property of the Authority is declared to be public property devoted to an essential public and governmental function and purpose and shall be exempt from all taxes and special assessments of the State, any subdivision thereof, or any unit of local government." STATUTE.

In ST 00-0016 (PLR), the Department found that a public corporation established as a separate operating unit of the Regional Transportation Authority pursuant to Section 2.02(a)(xii) of the Regional Transportation Authority Act, 70 ILCS 3615/, and an operating division established pursuant to Section 3B.01 of the Regional Transportation Authority Act, were exempt from the

Telecommunications Excise Tax by virtue of Section 4.08 of the Regional Transportation Authority Act. Section 4.08 states;

“The Authority and the Service Boards shall be exempt from all State and unit of local government taxes and registration and license fees other than as required for motor vehicle registration in accordance with the "Illinois Vehicle Code", as now or hereafter amended. All property of the Authority and the Service Boards is declared to be public property devoted to an essential public and governmental function and purpose and shall be exempt from all taxes and special assessments of the State, any subdivision thereof, or any unit of local government.”

The language of Section 4.08 of the Regional Transportation Authority Act is virtually the same as Section # of the ACT.

It is the Department's position that by virtue of Section # of the ACT, the COMPANY is exempt from the taxes and fees imposed by the Telecommunications Excise Tax Act, 35 ILCS 630/1 et seq. and the Telecommunications Infrastructure Maintenance Fee Act, 35 ILCs 635/1 et seq.

Pursuant to the Simplified Municipal Telecommunications Tax Act, a municipality may impose a tax on the privilege of originating and receiving telecommunications. 35 ILCS 636/5-10. Although your letters do not request a ruling that the COMPANY is exempt from the taxes imposed under the authority of that Act, it is the Department's position that by virtue of Section # of the ACT, the COMPANY also is exempt from the taxes imposed under the Simplified Municipal Telecommunications Tax Act. 35 ILCS 636/5-1 et seq.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

TDC:msk