

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. See 86 Ill. Adm. Code 495. (This is a GIL).

January 5, 2009

Dear Xxxxx:

This letter is in response to your letter dated November 27, 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.tax.illinois.gov](http://www.tax.illinois.gov) 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 represent CLIENT located solely in CITY/STATE. CLIENT has no physical presence in the State of Illinois nor does it have any customers within the State of Illinois. My client is a telecommunications reseller and utilizes certain traditional landline services and facilities supplied by ABC to transmit calls placed by CLIENT customers which are Offshore Call Centers within foreign countries, to residents within the State of Illinois and nationwide. CLIENT, also through the resale of ABC toll free services and facilities, transmits calls that originate in Illinois and terminate at the Offshore Call Centers within foreign countries. In both cases, CLIENT's customer is the Offshore Call Center and not the resident within the State of Illinois. The Illinois resident is never billed by CLIENT for any portion of the call. CLIENT is billed in STATE by ABC for CLIENT's use of ABC's facilities in the provision of service to its' [sic] offshore customers. ABC also bills CLIENT for certain Illinois taxes and surcharges. Attached hereto is a Description of Service Transactions that fully describes the service and means of provision of that service. There is no audit or litigation pending with the Department and to the best of our knowledge, the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor nor have we previously submitted the same or a similar issue to the Department.

As the services being described in the attachment are clearly international in nature and are not charged to a service address within the State of Illinois, we do not believe that the described transactions are taxable in the State of Illinois. Our position is supported by the IL Simplified Municipal Telecommunications Tax Act (35 ILCS 636/). We have not located any authority contrary to this position. CLIENT is seeking a Private Letter Ruling from the State of Illinois concerning the taxability of this service transaction from August 1, 2004 to September 30, 2006 and under current Illinois State tax laws. CLIENT requests that all identifying information as well as the attached Description of Service Transactions be deleted from any publicly disseminated version of the private letter ruling.

Questions to be addressed in Response to CLIENT's Request For Private Letter Ruling:

1. Does the State of Illinois consider the transactions described in the attachment international in nature?
2. Were calls originating within the State of Illinois on toll free numbers and terminating offshore which were not charged to any person or entity within the State of Illinois taxable by the State of Illinois under the tax laws in effect during the period from August 1, 2004 to September 30, 2006? Under current laws?
3. Were calls originating offshore and terminating within the State of Illinois is which were not charged to any person or entity within the State of Illinois taxable by the State of Illinois under the tax laws in effect during the period from August 1, 2004 to September 30, 2006? Under current laws?

Please contact me with any questions or additional information needed in order to make this determination. I appreciate your attention to this matter and look forward to hearing from you.

## DESCRIPTION OF SERVICE TRANSACTIONS

1. Offshore Callers
  - a. CLIENT's customer, an offshore Call Center, dials a U.S. number using its dialer / PBX
  - b. the call goes through the Call Center's Customer Premises Equipment ('CPE') to an International Private Line Circuit ('IPLC') which is provided by a licensed offshore telecom provider contracted by the Call Center
  - c. the call passes through the IPLC to the Call Center's CPE in a U.S. collocation facility contracted by the Call Center
  - d. the call is cross-connected from the collocated Call Center's CPE to a circuit contracted from ABC Business by CLIENT at the same collocation facility
  - e. the call goes across the circuit contracted from ABC Business by CLIENT to a ABC Business PSTN switch
  - f. ABC Business receives the call at its PSTN switch and through a contractual arrangement with CLIENT transports the call across ABC Business' long distance network to a Local Exchange Carrier ('LEC') or cell phone provider (which may be located within the same state as the state in which the Call Center's collocation facility is located in which case ABC assesses CLIENT state and local taxes and surcharges)

- g. the LEC or cell phone provider completes the call which is answered by a U.S. end user
- h. CLIENT is reselling the services to the Call Center which were purchased from ABC Business, however, in the processes described in a-g, above, the call is not touched or handled by any network or equipment of CLIENT, nor by any operator, Voice Response Unit ('VRU'), Automated Call Distribution equipment ('ACD'), or other answering equipment or process; CLIENT's only involvement is as a switchless reseller of the service

## 2. U.S. Callers

- a. End User in U.S. dials toll free number which passes to LEC
- b. the call is cross-connected from LEC switch to ABC Business' long distance POP
- c. ABC Business receives the call and through a contractual arrangement (inbound 800 service) with CLIENT terminates the call over its network to ABC Business' PSTN switch
- d. the call is cross-connected from ABC Business' PSTN switch to a circuit contracted from ABC Business (outbound 800 service) by CLIENT and then transported to the Call Center's CPE in a U.S. collocation facility contracted by the Call Center (which may be located within the same state in which ABC Business received the call in which case ABC Business is assessing CLIENT state and local taxes and surcharges)
- e. the call is cross-connected from Call Center's CPE to an IPLC contracted by the Call Center
- f. the call goes across the IPLC to Call Center's offshore CPE
- g. the call passes from the CPE to Call Center's dialer / PBX and is answered by offshore Call Center agent
- h. CLIENT is reselling the services to the Call Center which were purchased from ABC Business, however, in the processes described in a-g, above, the call is not touched or handled by any network or equipment of CLIENT, nor by any operator, Voice Response Unit ('VRU'), Automated Call Distribution equipment ('ACD'), or other answering equipment or process; CLIENT's only involvement is as a switchless reseller of the service

The attachment dated September 16, 2008, to your email dated September 25, 2008, states as follows:

Please see below the answers to the questions raised in Mr. Wolters' email of August 22, 2008:

1. Who pays for originating and terminating the calls to and from the call center?

Answer: The call center pays. CLIENT is the sole biller to the call center for each call transmission on a per-minute pricing basis for the duration of the entire transmission between the origination / termination points in the US and abroad.

2. Who pays for the originating 1-800 call from the U.S. (Illinois) customer to the ABC Long Distance POP (or the trunk side of the LEC switch, depending on who pays for the cross connect)?

Answer: The call center pays as CLIENT is the sole biller to the call center for each call transmission on a per-minute pricing basis for the duration of the entire transmission between the origination / termination points in the US and abroad.

3. Who pays for the cross connect to the Call Center collocation?

Answer: The call center pays for the cross connect; CLIENT is not involved.

4. Someone has to pay the LEC or cell phone provider for terminating the call?

Answer: ABC pays the LEC or cell phone provider. ABC in turn passes this cost on to CLIENT in it's [sic] per minute charge to CLIENT for the duration of the entire transmission between the origination / termination points in the US and abroad.

5. If your client is paying for originating and terminating these calls, is ABC collecting tax on these charges?

Answer: ABC does not collect tax in those states where the state acknowledges the international nature of the call transmissions. In all other states, as a matter of risk management it is safer for ABC to charge the tax and pass it onto its customer, i.e. in this instance, CLIENT.

## **DEPARTMENT'S RESPONSE:**

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4).

Based on the information you have provided to us in your initial letter, the attached Description of Service Transactions, your email to us dated September 25, 2008, along with the attachment dated September 16, 2008, and your email to us dated September 30, 2008, the Department believes that the calls that originated and terminated in Illinois by CLIENT on behalf of its call center client were taxable under the Telecommunications Excise Tax Act during the period you identify in your initial letter and remain taxable under current law. We cannot provide a definitive ruling on your request because we have not reviewed the contract between ABC and CLIENT which identifies the telecommunications services CLIENT purchases from ABC and explains how the services were provisioned, billed and taxed by ABC.

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. See 35 ILCS Sections 630/3 and 630/4. Telecommunications retailers collect tax from end users and remit it to the Department. See

86 Ill. Adm. Code 495.140. "Telecommunications", in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. See 35 ILCS 630/2(c).

Interstate and intrastate telecommunications that originate or are received in this State are subject to Telecommunications Excise Tax. Interstate telecommunications means all telecommunications that either originate or terminate outside the State. This includes telecommunications that originate or terminate outside of the United States. Consumers paying foreign taxes on telecommunications may take credit for such taxes in the same manner as taxes paid to other states. See 86 Ill. Adm. Code 495.115 and 495.130.

Retailers of telecommunications are persons who engage in the business of making sales of telecommunications at retail. 86 Ill. Adm. Code 495.110. "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration. The Telecommunications Excise Tax must be collected from a taxpayer by a "retailer maintaining a place of business in this State." The Department may, in its discretion, upon application, authorize the collection of the tax by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for telecommunications in this State in the same manner and subject to the same requirements as a retailer maintaining a place of business within this State. The permit may be revoked by the Department at its discretion. 35 ILCS 630/2(l).

A retailer maintaining a place of business in this State must collect and remit to the Department the tax imposed by the Act. The retailer shall be liable for the tax whether or not the tax has been collected by the retailer. 35 ILCS 630/5.

If a person who originates or receives telecommunications in this State claims to be a reseller of such telecommunications, the person is required to apply to the Department for a resale number. The applicant must state facts which show the Department why the applicant is not liable for tax on his purchases. The act or privilege of originating or receiving telecommunications in this State can not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from the Department and furnishes that number to the retailer in connection with a sale to such person. 35 ILCS 630/8.

If a person originating or receiving telecommunications in this State elects not to apply for a resale number, the act or privilege of originating or receiving telecommunications in this State by such person can not be made tax-free. If a reseller is purchasing telecommunications services from a retailer and has not provided the retailer with an active resale number, the retailer is responsible for collecting the tax from the reseller for calls originating or terminating in this State.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters  
Associate Counsel

RSW:msk