

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 Part 495. (This is a GIL).

March 24, 2009

Dear Xxxxx:

This letter is in response to your letter dated May 19, 2008, 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 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:

On behalf of our client, we are requesting a written private letter ruling from the State of Illinois with respect to the treatment of certain services for the purposes of applying Illinois' retailer's occupation tax ('ROT')/service occupation tax ('SOT') statutes and regulations.

Facts:

1. Company A provides a service to Retailers or Dealer (hereafter Retailer) called 'Call Tracking' services.
2. Through the 'call tracking' services, the Retailer is provided one or more toll-free numbers that can be customized to the Retailers' specific needs. In other words, the Retailer can choose whether the toll-free number has some recognizable features such as repeating digits or the name of the Retailer.
3. The toll-free numbers can be used by Company A in their advertisements on their website, or on the Retailer's website or any other form of advertising media.

4. Under certain premium plans, the toll-free numbers can also be used in the Retailer's advertisements placed in the newspapers, radio, TV ads, etc.
5. Fees charged by Company A to Retailers for the call tracking service range from \$99 per month for one toll-free number (basic service) to \$499 per month for ten toll-free numbers (premium service).
6. Company A purchases the technology solutions needed to deliver the service from Company B, which is located in California. Company B also has a call center located in STATE.
7. In addition to the toll-free numbers, Company A also provides a service as part of the Call Tracking service to Retailers to enable the Retailers to capture referrals from Company A and other advertising mediums, measure the result of the referrals and advertising initiative, and to collect data relative to the referrals.
8. Company B contracts with several telecommunications providers for a pool of toll-free numbers. These numbers are leased, not owned, and can be swapped in or out depending on the needs of its customers.
9. The telecommunications providers bill Company B based on the number of minutes that the toll-free numbers are used.
10. It is Company A's understanding that applicable federal, state and local sales and use taxes are included in the telecommunications service provider's invoice to Company B.
11. Company A can purchase either a basic service or a premium service from Company B.
12. Basic Service - Company A pays Company B a monthly fee equal to \$10 per toll-free number plus 6.5 cents per 'system' minute over 100 minutes of system time (per line) and 15 cents per successful lookup (per line).
13. Premium Service - Company A pays Company B a monthly fee equal to 55% of the fees received from Company A's customers (i.e. Retailers) plus 7 cents per minute in excess of 2,500 system minutes and 15 cents per lookup over 4,00 lookups.
14. Upon selling the Call Tracker services to a Retailer, Company A will set up the account through Company B's website. The Retailer is then provided with the required number of toll-free numbers from the pool of numbers provided to Company B by the telecom providers. The Retailer will display the number on its website, on a 3rd party's website, on Company A's website, or in a newspaper, magazine, TV advertisement, etc.
15. When a customer of Retailer A dials the toll-free number, the call is connected to Company B's servers located in STATE. Company B's servers pick up the call and perform the following tasks:
 - a. Play a 'Welcome' message
 - b. Take information about the caller and pass it on to other software

- c. Search various demographic databases accumulating information about the caller
 - d. The customer is then connected to the 'point to number', which is the location in which the toll-free number rings.
16. After the above tasks are performed by Company B's server the call is routed to Retailer A from Company B's server. Company B's servers then provide the information obtained from/about the customer to Retailer A via the Internet. The salesperson at Retailer A has access to all of this information. A salesperson at Retailer A answers the phone and a recording is played indicating who is on the line, where the customer obtained the toll-free number and asking if the salesperson wishes to be connected to the customer. The salesperson is then connected to the customer. Company B's servers are still participating in the call since the phone call is being recorded. Once the Retailer is done talking to the customer, the customer has the option to take a survey. If the customer chooses, Company B's servers take over asking the customer to take a survey. Once the customer hangs up, the call comes to end.
17. As far as the telecommunications service providers are concerned, Company B is placing calls to and from STATE. Only sales taxes applicable to STATE are charged by the telecommunications service providers. As discussed above, Company B charges Company A based on system minutes – the length of time Company A's customer was in Company B's servers. These system minutes are not the same as the minutes charged by the telecommunications providers.
18. Company B does not own or lease carrier equipment.
19. The Retailer has access to a report via the internet that contains the detailed information for each of these calls – including a link to a recording of the call. Under the premium plan, the Retailer can also create reports to determine which advertisements were most effective based on the number of calls using the toll-free number assigned to that advertisement. Company A also receives a report summarizing the Retailer's phone referral reports and end user (Retailer's customer) usage rates for each toll-free number.
20. The contract between Company A and Company B states that Company A is responsible for payment of any and all telecommunications taxes.

Issue

Are the 'call tracking' services sold by Company A to Retailer subject to Illinois ROT or SOT?

Conclusion

The sale of call-tracking services from Company A to Retailer is a sale of nontaxable services with no transfer of tangible personal property.

Law:

The relevant authorities are quoted below.

Sales and Use Tax

Illinois ROT is imposed on persons engaged in the business of selling tangible personal property ('TPP') at retail. Ill. Rev. Stat. ch. 35 para 120/2. The SOT is imposed on persons engaged in the business of making sales of services. The SOT is imposed on all TPP transferred as an incident of the sale of service; the service itself is not taxable. Ill. Rev. Stat. ch. 35 paras 115/1, 115/3.

Information Services

Information or data that is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, does not constitute the transfer of TPP; these types of transactions represent the transfer of intangibles and are thus not subject to ROT. Ill. Reg. § 130.2105. If such information was transferred in a tangible format, the transfer would be taxable under the ROT or SOT, depending on whether the item is customized. General Information Letter ST 02-0105-GIL, Illinois Department of Revenue, May 3, 2002.

In Private Letter Ruling ST 04-0013, Oct. 27, 2004, the Department ruled that a company that sold web-based information services to clients was nontaxable. The taxpayer was in the business of providing electronic financial information through a database accessed through the Internet. No software or other TPP was transferred to its customers. The Department found that because TPP was not transferred the taxpayer would not be subject to the ROT or SOT on the downloads or database information service.

Telecommunication Services

The Telecommunications Excise Tax is imposed on the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at a rate of 7% of the gross charges for such telecommunications services. Ill. Reg. § 495.140(a). 'Gross charges' means the amount paid for the act or privilege of originating or receiving telecommunications in Illinois and for all services and equipment provided in connection with providing telecommunications by a retailer. Ill. Reg. § 495.100(a). The term does not include charges for the storage of data or information for subsequent retrieval or charges for the processing of data or information intended to change its form or content. In addition, charges for automated data storage, retrieval and processing services or for the use of computer time or other equipment are not included in gross charges. Automated information retrieval or data processing charges are not included in gross charges as well. Ill. Reg. § 495.100(c).

Analysis:

Based on the foregoing, we respectfully request a determination that the call-tracking services are not subject to Illinois ROT, SOT or the telecommunications excise tax. Company A provides call tracking services to Retailers. This service allows Retailers to monitor, record, and view real time information about prospective customers, measure the results of the advertising initiative, and collect prospective customer data relative to the referrals. The information provided in this service, like data processing information services, is individual to each Retailer; customers are referred to one Retailer based on certain criteria (e.g., location of customer, etc.).

The information gathered from that referral is then recorded and reported to that specific Retailer and is not provided to any other Retailer; the information gathered cannot be shared or sold to any other party or be made generally available. The Retailer pays for the data and it is exclusive to the Retailer; Company A cannot resell the information to any other Retailer or incorporate that information into another report furnished to a different Retailer. The information provided is in the intangible form and TPP is not transferred in the transaction. It presents similar facts to General Letter Ruling 02-0105 whereby the Department held that the information services and electronic downloads of information were not subject to the Illinois ROT or SOT.

Furthermore, Retailer is not purchasing a telecommunications service or a 'toll-free' number but rather the tracking and reporting capability of that specific number. The primary purpose for Retailer to procure the call tracking services from Company A is to obtain information regarding prospective customers, not the use of the line. The fact that Company A charges Retailer a subscription fee rather than a telecommunications or line charge further supports the position that information or other services and not telecommunications services are being sold. Illinois specifically excludes data processing and information services from the definition of 'gross charges' for purposes of the telecommunications excise tax. The call-tracking service should be deemed to be either an information service or data processing service as Company A is manipulating information furnished by the caller to the Retailer through a series of operations involving an interaction of processes, methods, personnel and computers, which is then transferred electronically to the Retailer.

As such, Company A is providing nontaxable information services or some other nontaxable data processing services to the Retailers. Information services are not subject to tax nor are the electronic downloads, as they are deemed to be intangible property. Further, Company A is not providing a telecommunications service as they are charging a subscription fee and the true object of the transaction is the call tracking service and the electronic download, which are specifically not subject to the Illinois ROT or SOT.

Please send your response to (via email and hard-copy):

NAME/ADDRESS

If you have any questions regarding this request or require additional information, please contact me.

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). The Department did not receive a Power of Attorney with your letter. This is a requirement for obtaining a PLR. See Section 1200.110(a)(1). Based on our telephone conversation, you have elected not to provide a Power of Attorney at this time; therefore, the Department will respond with a GIL.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service. If tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Service Use Tax liability for the servicemen depending upon his activities. However, if no tangible personal property is transferred incident to the sales of service, the Service Occupation Tax and Service Use Tax do not apply. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service. The registration requirements for servicemen may be found at 86 Ill. Adm. Code 140.601.

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). "Telecommunications" does not include "charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content" or "value-added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission." See 35 ILCS 630/2(a) and 2(c).

"Gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever. If telecommunications retailers provide both such services and also transmission services, the charges for each must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not disaggregated, the entire charge is taxable as a sale of telecommunications. For general information regarding application of the Telecommunications Excise Tax, please refer to 86 Ill. Adm. Code 495.100, which sets forth examples within the meaning of "Gross Charges."

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).

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.

Based on the information you have provided to us in your initial letter, the Department cannot determine whether Company A is providing telecommunications services. You state that Company A provides Retailers with 1-800 numbers but you do not identify who pays for the telephone calls made by use of the 1-800 numbers. It is not clear whether the costs for the calls are included in the fees for call tracking services paid by the Retailers to Company A. In addition, without reviewing the contracts between Company A and Retailers, we are unable to provide a definitive ruling on your request. See Section 1200.110(b)(2). Furthermore, based on the facts you have provided, it appears Company B may be reselling telecommunications to Company A.

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 or contact the Department's Taxpayer Information Division at (217) 782-3336

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk