

Telecommunications purchased, used, or sold by a provider of Internet access to provide Internet access are subject to the federal moratorium on state-imposed telecommunications taxes. See 47 USC § 151 note. (This is a GIL.)

April 29, 2009

Dear Xxxxx:

This letter is in response to your letter dated July 24, 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:

This letter concerns Illinois Telecommunications Excise and Gross Receipts Taxes on telecommunications services purchased by Internet Service Providers (‘ISPs’).

Recently, in passing the Internet Tax Freedom Act Amendments Act, Public Law 110-108 (‘the Act’), the federal government extended its moratorium on the imposition of any sales or use tax on Internet service through the year 2014. Additionally, effective July 1, 2008, the Act also expands the definition of ‘Internet access’ to include telecommunications services ‘to the extent such services are purchased, used or sold by a provider of Internet access to provide Internet access.’ Therefore, sales, excise and gross receipts taxes of any kind cannot be imposed on telecommunications services purchased by ISPs for purposes of providing Internet service to their customers.

New York State, has issued guidance in a formal Department Memorandum on this issue, TSB-M-08(4)C,(2)S. The memorandum states that telecommunications sales and excise taxes, which are imposed on ISPs on their purchase of telecommunications service for purposes of providing Internet service, will no longer be imposed on such purchases or sales after June 30, 2008, in accordance with federal law. A copy of this Memorandum is attached for your reference.

We request the Department of Revenue acknowledge this change in federal policy and issue guidance on whether the Department agrees to the provisions outlined in the Act. We have read your Informational Bulletin 2008-18 and understand how the federal law affects the purchase of DSL services by ISPs in Illinois, but we require clarification on how the federal law would affect other types of telecommunications services purchased by ISPs for providing Internet access. If no additional formal pronouncement is planned, we are seeking written guidance from the Department regarding Public Law 110-108 and how it will affect the taxation of non-DSL telecommunications services purchased by ISPs in Illinois with regard to the telecommunications excise and gross receipts tax at both the state and local level. Please note that time is of the essence, as the federal law has already taken effect. Thank you for your assistance in this matter.

If you have any questions, please call me.

DEPARTMENT'S RESPONSE:

The Internet Tax Freedom Act Amendments of 2007, Pub. L. 110-108, amended the Internet Tax Freedom Act. 47 USCA § 151 note. The 2007 Amendments, among other things, amended the definition of "Internet access" contained in Section 1105 and the grandfather provisions contained in Section 1104.

Section 1104, as amended, grandfathered from the definition of "internet access," until June 30, 2008, taxes that were

"generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a state or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner inconsistent with" Section 1104(c)(1).

The Department issued General Information Letters as early as 1996 advising that, generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges that are used to obtain access to the Internet, are not considered to be telecommunications retailers. See ST 96-0491 (GIL). See *also* ST 97-0186 (GIL). It was and remains the Department's position that the Internet Freedom Tax Act, as originally enacted and as amended, permitted the State of Illinois to impose the Telecommunications Excise Tax on all telecommunications services used to provide Internet access through November 1, 2007, and after the 2007 Amendments, through June 30, 2008. See Informational Bulletin FY 2006-09; ST 06-131 (GIL); Informational Bulletin FY 2008-18. Based on the 2007 Amendments, the Department issued Information Bulletin FY 2008-18 in June 2008, which stated that "[b]eginning July 1, 2008, DSL services purchased, used, or sold by a provider of Internet access, to provide Internet access are no longer subject to Illinois telecommunications taxes."

In the Internet Tax Freedom Act, as amended, "Internet access," in part:

"(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

"(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold-

"(i) to provide such service; or

"(ii) to otherwise enable users to access content, information or other services offered over the Internet; ..."

The Internet Tax Freedom Act definition of "Internet access" is technology neutral. "Telecommunications" subject to the Telecommunications Excise Tax Act that are also included in the definition of "Internet access" contained in the Internet Tax Freedom Act fall within the scope of the moratorium. However, paragraph D of the definition of "Internet access" excludes "voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E)." Therefore, telecommunications, including Voice over Internet Protocol (VoIP), that are not purchased, used or sold by a provider of Internet access to enable users to connect to the Internet or to otherwise enable users to access content, information or other services offered over the Internet do not fall within the scope of the federal moratorium and remain subject to the Telecommunications Excise Tax.

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,

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Associate Counsel

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