

Under the Telecommunications Excise Tax Act, gross charges do not include charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges. See 86 Ill. Adm. Code 495.100. (This is a GIL.)

April 30, 2009

Dear Xxxxx:

This letter is in response to your letter dated September 18, 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 writing to request a written ruling in regard to the application of Illinois sales and use tax to the sale and lease of satellite communications services and related network equipment. Your prompt response would be greatly appreciated.

FACTS

The Company provides satellite communications services to enterprise and government customers throughout North America, primarily in the United States. As an example, a customer may use a satellite communications network to provide credit card processing. In addition to providing satellite communications services, the Company sells or leases certain related satellite communications network equipment to its customers. The Company maintains two satellite communications operations centers (i.e., Earth stations) in STATES. During 2001 and 2002, the Company also maintained an Earth station in STATE. Customers' communications may be directed through any of the aforementioned Earth stations.

The satellite communications network equipment sold or leased by the Company generally includes 1) hub equipment and 2) very small aperture terminal (VSAT)

equipment including all associated parts. In a typical satellite communications network, VSAT equipment is utilized by a customer at its remote locations to communicate through a satellite to one or more Earth stations utilizing the hub equipment. In the credit card processing scenario, the communication is then sent from the Earth station to the customer's data center (e.g., customer's headquarters) and to a third party processing center using either a dedicated line or via the Internet. Hub equipment can be owned by the customer or the Company; but the hub equipment is operated and maintained by the Company at a customer location or at the Company location. The VSAT equipment is generally maintained by the Company at the customer location.

A single contract is executed between the Company and its customer, which provides for the provision of satellite communications services along with the sale or lease of the VSAT and hub equipment. However, the Company does separately state its charges for communications services and the sale or lease of VSAT and hub equipment on its customer invoices.

For purposes of this ruling request, the majority of the Company's VSAT and hub equipment and all associated parts are stored at its warehouse located in the STATE prior to shipment to customers.

The Company renders satellite communications services and provides VSAT and hub equipment to customers under the following contractual arrangements:

- 1.) **A Single Stand-Alone Contract that includes Satellite Communications Services and Sale of VSAT and hub equipment:** These contracts provide for both the provision of satellite communications services and the sale of VSAT and hub equipment. The VSAT and hub equipment are delivered and installed either at the Company's location or at the customer location in Illinois by the Company. The Company operates and maintains the VSAT and hub equipment after the equipment is delivered and installed. The price of the VSAT and hub equipment is clearly segregated from the charge for the provision of satellite communications services on the customer invoice (i.e., charges are separately stated on invoices to customers). The price for the VSAT and hub equipment is not incidental or nominal with respect to the charge for satellite communications services, and vice-versa. Title to the VSAT and hub equipment and risk of loss are generally passed to the customer upon payment of a deposit or delivery and installation of the equipment.
- 2.) **A Single Stand-Alone Contract that includes Satellite Communications Services and Lease/Rental of VSAT and hub equipment:** These contracts provide for both the provision of satellite communications services and the lease or rental of VSAT and hub equipment. The VSAT and hub equipment are delivered and installed either at the Company's location or at the customer location in Illinois by the Company. The Company operates and maintains the VSAT and hub equipment after the equipment is delivered and installed. The price for VSAT and hub equipment lease is clearly segregated from the charge for the provision of satellite communications services on the customer invoice (i.e., charges are separately stated on invoices to customers). The price for the VSAT and hub equipment is not incidental or nominal with respect to the charge for satellite communications services, and vice-versa. Title to the VSAT and hub equipment remains with the Company throughout the duration of the contract.

The Company is currently registered for the collection of Illinois sales tax.

RULINGS REQUESTED

This ruling request is specifically inquiring about the imposition of Illinois sales and use tax regarding the Company's contracts. This ruling request is not seeking information related to other state or local taxes such as telecommunications, communications, income/franchise, personal property, license, excise or other similar state and local taxes.

For the following questions below, please provide the relevant statutory, regulatory, and administrative authorities, as well as applicable case law to support your conclusions:

- 1.) For sales and consumer use tax purposes, how does Illinois treat a single stand alone contract which includes both satellite communications services AND the sale of VSAT and hub equipment (i.e., tangible personal property operated and maintained by the seller)?
2. For sales and consumer use tax purposes, how does Illinois treat a single stand alone contract which includes both satellite communications services AND the lease of VSAT and hub equipment (i.e., tangible personal property operated and maintained by the lessor)?
3. For each of the two contract types described above:
 - i.) Is the total contract subject to the collection of Illinois sales and use tax by the Company? If yes, please explain. If no, please explain.
 - ii.) If the total contract is not taxable, are the separately stated charges for the VSAT and hub equipment subject to the collection of Illinois sales and use tax by the Company? If yes, please explain. If no, please explain.

If you have any questions, please contact me. Thank you in advance for your immediate attention to this matter.

DEPARTMENT'S RESPONSE:

Your letter does not provide sufficient information to enable the Department to provide responses to the specific questions contained in your letter. Furthermore, we do not have access to the contracts to assist us in any response. Your letter states that you are not seeking information regarding telecommunications services; however, the charges for the equipment referred to in your letter may be taxable under the Telecommunications Excise Tax Act depending on whether the charges for the equipment are disaggregated and separately identified on the Company's books and records. For this reason we have provided information regarding this Act.

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. This tax must be collected from persons by "retailers maintaining a place of business in Illinois." 35 ILCS 630/5. "Gross charges" 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 materials used, labor or service costs or any other expense whatsoever. However, gross charges do not include charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges in the books and records of the retailer. See 86 Ill. Adm. Code 495.100.

You have asked about a telecommunications transaction where tangible personal property is transferred to customers and a separately-stated charge is made to the customer for the tangible personal property. The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property 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. If the charges for the tangible personal property and the charges for the provision of telecommunications services are separately identified on the customer's bill, the charges for the provision of telecommunications services are subject to Telecommunications Excise Tax, and the charges for the tangible personal property are subject to the Retailers' Occupation Tax.

When a seller engages in the business of selling tangible personal property at retail, and such tangible personal property is installed by the retailer, the receipts from such installation charges must be included in the gross receipts upon which the Retailers' Occupation Tax liability is measured if such installation charges are included in the selling price of the property being sold. If, however, the seller and buyer agree upon the installation charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation charges are not a part of the "selling price" of the tangible personal property which is sold. Instead such charges constitute a service charge, separately contracted for, which need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.450.

In Illinois, lessors of tangible personal property under a true lease, except for automobiles leased for terms of one year or less, are considered to be the end users of the property to be leased. See 86 Ill. Adm. Code 130.220 and 130.2010. As the end users of tangible personal property located in Illinois, lessors incur Use Tax on the lessors' cost price of the property. Since lessors are considered the end users of the property and have paid the Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts, and the lessees incur no Use Tax liability for the rental charges.

In Illinois, a true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. As mentioned, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See 86 Ill. Adm. Code 150.310(a)(3).

Even though lessees do not incur any tax liability in a true lease situation, it is typical of true leases to contain contractual provisions stating that the lessees will reimburse the lessors for their tax costs. This is not a matter of Illinois tax law but of private agreement between lessors and lessees. If the lessees agreed to such provisions, they are bound to satisfy that duty because of a contractual agreement, not because of Illinois tax law.

As stated above, the State of Illinois imposes no Retailers' Occupation Tax or Use Tax on rental receipts. Moreover, since a lessee under a true lease incurs no tax liability on the lease of tangible personal property, the lessee generally incurs no such tax liability on any related lease charges such as late payment fees, lease termination fees, etcetera.

For situations where tangible personal property is being leased or rented to the customer as a part of a telecommunications transaction, please see 86 Ill. Adm. Code 495.100(b).

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

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