

The Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.* imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. (This is a GIL.)

May 27, 2009

Dear Xxxxx:

This letter is in response to your letter dated April 23, 2009, 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:

Re: General Information Letter Ruling Request – Call Tracking Services

This letter is in response to your letter dated March 24, 2009 (copy enclosed) responding to our request for a private letter ruling with respect to the treatment of 'call tracking' services for purposes of applying Illinois retailer's occupation tax/service occupation tax statutes and regulations.

Enclosed are copies of the contracts (Attachments 1, 2 & 3) between Company A and Company A's Retailers as requested in your letter. As stated in Item #5 of the Facts Section in the original request, 'fees charged by Copy 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).' The costs for the minutes incurred during the telephone calls are included in the fee for call tracing services, but are not broken out separately from the other service charges.

We have also enclosed a portion of the Agreement between Company A and Company B describing Company B's fees for providing the call tracking services (Attachment 4), along with a schedule of the fees (Attachment 5). As shown in the Attachments, Company B charges Company A a monthly service fee that is calculated based upon the number of toll-free numbers and additional minutes used per month by Company A's

Retailers. As stated in Item #9 of the Facts Section in the original request, 'the telecommunications providers bill Company B based on the number of minutes that the toll free numbers are used.' Also, as stated in Item #10 of the Facts Section in the original request, '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.'

We appreciate your assistance with this general information letter request. If you have any questions or need additional information, please feel free to call me.

#### **DEPARTMENT'S RESPONSE:**

As we pointed out in the response to you dated May 24, 2009, since you elected not to provide a power of attorney from your client, we were unable to respond with a private letter ruling. We also noted that without reviewing the contracts, we were unable to provide a definitive ruling on your request. It is apparent from a review of the agreements that you provided that they are incomplete because they incorporate by reference the detailed terms and conditions of the applicable services outlined in the Dealer Participation Brochure, which you have elected to not provide us.

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.

Although your latest letter appears to confirm that Company A is providing telecommunications services to Company A's Retailers, it is still unclear from the documents you have provided whether Company A is selling at retail or transferring incident to the sale of service any tangible personal property. Whether tangible personal property is being sold or transferred incident to a sale of service is fundamental to any determination whether there is any Retailers' Occupation Tax, Use Tax, Service Occupation Tax or Service Use Tax liability.

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

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