

ST 13-0073-GIL 11/26/2013 TELECOMMUNICATIONS EXCISE TAX

Generally, one-time account set-up fees are necessary for, and are directly related to, the retailer's provision of telecommunications to customers and are included in the gross charges subject to Telecommunications Excise Tax. See 86 Ill. Adm. Code 495.100(a).

November 26, 2013

Dear Xxxxx:

This letter is in response to your letter dated October 1, 2013, 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:

After speaking with a representative at the Department of Revenue, we were told to complete a letter describing client charges that we feel should not be taxable. After review of our letter, the Department of Revenue would then decide on the matter and relay the outcome to us. The client charges in question are One-Time Setup Fees.

Our setup fee is an administration charge that covers the internal setup of the client account and to offset any administrative expenses to the client acquisition process. The setup fee is not in any way related to actual services or equipment. Therefore, we do not charge our clients any tax related to this set-up fee, nor do we feel we should have to pay tax for these charges.

When filing our Telecommunications Excise Tax and Telecommunications Maintenance Fee tax forms, we stated our gross sales in line one. We then deduct our one-time setup fee in line 4d to arrive at our net gross subject to tax. In the last two months, we have received return correction notices along with a notice of taxpayer liability and taxpayer statements that showed a tax owed amounts related to these setup fees. After speaking with a Department of Revenue representative, we went ahead and paid the fees with the intention of protesting. We were also charged late payment fees on these tax amounts. If accepted, were told that all excess tax and late penalties would be credited to our account.

DEPARTMENT'S RESPONSE:

The Illinois Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons. 35 ILCS 630/3 and 4. The Simplified Municipal Telecommunications Tax Act allows municipalities to impose a tax on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by persons in Illinois at a rate not to exceed 6% for municipalities with a population of less than 500,000, and at a rate not to exceed 7% for municipalities with a population of 500,000 or more, of the gross charges for such telecommunications purchased at retail from retailers by such persons. 35 ILCS 636/5-10 and 5-15.

“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. “Telecommunications” do not include “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). If telecommunications retailers provide these services, the charges for each service must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not thus disaggregated, the entire charge is taxable as a sale of telecommunications.

“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. “Gross charges” do 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.” 86 Ill. Adm. Code 495.100(c).

Generally, one-time account set-up fees are necessary for, and are directly related to, the retailer's provision of telecommunications to customers and are included in the gross charges subject to Telecommunications Excise Tax. 86 Ill. Adm. Code 495.100(a).

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