ST 99-0166-GIL 05/17/1999 TELECOMMUNICATIONS EXCISE TAX

Generally, persons who provide subscribers access to the internet and who do not, as part of that service, charge subscribers for the line or other transmission charges that are used to obtain access to the internet are not considered to be telecommunications retailers from these activities. (This is a GIL).

May 17, 1999

Dear Xxxxx:

This letter is in response to your letter dated April 29, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

> Per my conversation with Beth Winters at DOR on 4/27/99, I am hereby sending this memo to request something in writing to the following effect:
>
> Beth stated that ISP's are exempted from any sort of Sales tax, or for that matter any other tax, in the state of Ill. She further stated that I may send this memo to request something in writing. Although, as I understand, there is no official statute, I would nevertheless appreciate some form of official written documentation stating this as a backup source.

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 (1994 State Bar Edition). This tax must be collected from persons by "retailers maintaining a place of business in Illinois." 35 ILCS 630/5 (1996 State Bar Edition). "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. "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). If telecommunications retailers provide both such 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 thus disaggregated, the entire charge is taxable as a sale of telecommunications.

Generally, persons that provide subscribers access to the internet and who do not, as part of that service, charge subscribers for the line or other transmission charges that are used to obtain access to the internet are not considered to be telecommunications retailers from these activities. It is our general understanding that most internet access providers do not, as part of their billing, charge subscribers for such line charges, but instead, pay all transmission costs to their telecommunications providers. If companies provide telecommunications to such end-users (e.g., to the internet access providers described immediately above) and are also "retailers maintaining a place of business in this State," they are required to collect the tax from such internet access providers and remit it to the Department. If, however, the internet access providers charge subscribers for line or other transmission charges, they should provide their telecommunications providers with Certificates of Resale and should themselves collect and remit tax.

In general, sales of “canned” computer software are taxable retail sales in Illinois. See the enclosed copy of 86 Ill. Adm. Code 130.1935. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See Section 130.1935(c).

Custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See Section 130.1935(c)(3).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.