ST 03/0073-GIL 06/18/2003 ENTERPRISE ZONES

This letter discusses the exemptions from telecommunications excise taxes and fees that businesses certified by the Department of Commerce and Economic Opportunity under 220 ILCS 5/9-222.1 are eligible for. (This is a GIL.)

June 18, 2003

Dear Xxxxx:

This letter is in response to your letter dated January 6, 2003. 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 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at http://www.revenue.state.il.us/legalinformation/regs/part1200.

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

> We are requesting a written letter ruling pertaining to exemption from the Telecommunications Excise Tax afforded certified enterprise zone businesses. We are not currently under audit nor have any pending litigation affecting the issues presented below.
>
> ABC has been certified by the Department of Commerce and Community Affairs (DCCA) under Section 9-222.1 of the Public Utilities Act for its operations in the Enterprise Zone. Section 2(a)(5) of the Telecommunications Excise Tax Act (TET) specifically states that charges to such certified business enterprises be exempt from TET for the period of certification by DCCA. This same question was addressed in Sunshine Letter Ruling ST 92-0014.
>
> As such, it is our interpretation that we should be exempt from TET at all of our CITY operations. In addition, we would also like to raise this same question for cellular telephone charges and data communication lines along with asking that you address the application of this exemption retroactively.
>
> If you have any questions or require additional information, please feel free to write or call me.

The Telecommunications Excise Tax Act excludes charges to business enterprises that have been certified under 220 ILCS 5/9-222.1 as being located in an Enterprise Zone by the Illinois Department of Commerce and Community Affairs. See, 35 ILCS 630/2(a)(5). A business that is located in an Enterprise Zone that seeks to have an additional location certified as being in an Enterprise Zone should contact the Department of Commerce and Community Affairs (DCCA), 620

East Adams Street, Springfield, Illinois 62701. If new accounts (telephone lines or numbers) are to be added at that location, DCCA will provide the necessary certification that they are not subject to Telecommunications Excise Tax. If new accounts (telephone lines or numbers) are provided to service addresses with existing accounts that are already certified by DCCA as exempt, those new accounts are exempt from Telecommunications Excise Tax. Businesses that are certified under Section 9-222.1 are also exempt from the State Telecommunications Infrastructure Maintenance Fee and the Simplified Municipal Telecommunications Tax.

Your letter seems to be asking whether locations other than the one listed on your certification are also exempt from these taxes and fees. Generally DCCA lists the main address of the business in the enterprise zone on the certification, but all other addresses of the business that are located in that enterprise zone are also exempt. Other addresses of the business, that are not located in the enterprise zone, are not exempt. Therefore, the exemption status of your Decatur businesses will be determined by whether or not any or all of them are located within the enterprise zone.

The definition of “telecommunications” under Section 2 of the Telecommunications Excise Tax Act includes, in addition to the meaning ordinarily and popularly ascribed to it “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. As used in this Act, "private line" means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of "telecommunications" shall 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. "Telecommunications" shall not include purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale. The enterprise zone certification exemption exempts all of these telecommunications activities from tax.

Section 10 of the Telecommunications Excise Tax Act governs claims for credit or refund. Under Section 10, if it appears that the retailer has paid an amount of tax or penalty or interest in error, the retailer may file a claim for credit or refund. However, no credit or refund will be allowed for any amount paid by the retailer unless it is shown that the retailer bore the burden of such amount and did not shift the burden to anyone else. This means the retailer would have to show that he has unconditionally repaid the tax to the customer from whom he collected such tax. Please note that the Department has no authority to compel a retailer to file a claim for credit. Whether or not a retailer refunds to a customer the taxes paid and files a claim for credit with the Department is a private matter between the retailer and the customer.

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 Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk