

For purposes of the Telecommunications Excise Tax, "telecommunications" does 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 630/5-7 and 86 Ill. Adm. Code 495.100(d). (This is a GIL.)

April 12, 2006

Dear Xxxxx:

This letter is in response to your letter dated December 13, 2004, 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 the BOARD, I am respectfully requesting that the Illinois Department of Revenue provide written clarification on the exemption from the Simplified Municipal Telecommunications Tax Act for the BOARD's value added service as a data applications host provider. In order to provide you additional information, please find the following historical synopsis of the BOARD and the value added data services it provides to its public safety members.

BOARD:

The BOARD is a statutorily appointed board. In April, 1989, the voters of COUNTIES approved the 9-1-1 surcharge referendum. Subsequently, the BOARD was appointed pursuant to 50 ILCS 750/1. The BOARD includes all of the unincorporated areas of COUNTY and all the municipalities within COUNTY, except CITIES. The BOARD is responsible for providing enhanced 9-1-1 service to all of the public safety answering points within the system. The BOARD receives surcharge funds and pays for all services associated with 9-1-1. Pursuant to the 9-1-1 tariff for automatic number identification and automatic location identification (ANI/ALI) the BOARD is charges [sic] fifteen cents (\$.15) per network connection in the 9-1-1 system. The BOARD pays ABC for the ANI/ALI service and the associated Simplified Municipal Telecommunications Tax.

The BOARD procures voice communications trunk lines from ABC for the 9-1-1 system voice traffic. The voice communications lines are subject to taxation. In addition, the BOARD procures high speed data network to provide access to historical police and fire emergency incident data. It is the high speed data network that constitutes the value added service in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. The data network should not be subject to the Simplified Municipal Telecommunications Tax.

BOARD and Value Added Data Services:

Frame Relay Service:

The BOARD procures computer and data services for its membership at no additional cost to the members. Since 1999, the BOARD has contracted with ABC to provide frame relay services. The frame relay service enables the BOARD to serve as an applications host provider for the 9-1-1 data services and allow the member public safety agencies to have access to 9-1-1 data. The frame relay network uses transmission control protocol/ internet protocol (tcp/ip) as a transport method for the BOARD members to access the applications host. The frame relay network is a value added service in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. As a data network, the frame relay service was never subject to federal, state or municipal telecommunications taxation.

Synchronous Optical Network (SONET):

In October, 2003, the BOARD entered in a contract with ABC to upgrade the old frame relay service from 128 KBS to a new 1,544 KBS Synchronous Optical Network (SONET) service. The new Synchronous Optical Network (SONET) service merely increases the speed to access the police and fire 9-1-1 incident data. Equipment from the old frame relay service continues to be used in the Synchronous Optical Network (SONET) at the police and fire agencies served by the network. The BOARD continues to serve as the application host provider for the member public safety agencies. The SONET does not originate, transmit or receive voice communications from the BOARD to the member public safety agencies. The Synchronous Optical Network (SONET) network uses transmission control protocol/internet protocol (tcp/ip) as a transport method for the BOARD members to access the applications host. The Synchronous Optical Network (SONET) network is a value added service in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. As an upgraded replacement data network, the Synchronous Optical Network (SONET) service should not be subject to federal, state or municipal telecommunications taxation.

Simplified Municipal Telecommunications Tax Act:

Pursuant to 35 ILCS 636/5-10 of the Simplified Municipal Telecommunications Tax Act, the corporate authorities of any municipality in the State of Illinois may tax the act or privilege of originating in such municipality or receiving in such municipality intrastate telecommunications by a person. 35 ILCS 636/5-7 specifically excludes from the definition of telecommunications a value added service in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. Since the Synchronous Optical Network (SONET)

network falls within the specific exclusion the statute contemplated, it is clearly excluded from the Simplified Municipal Telecommunications Tax.

Conclusion:

The BOARD has worked diligently to provide its membership with the best transmission control protocol/internet protocol (tcp/ip) network available. To unduly burden the 9-1-1 system and taxpayers with the imposition of a tax that the Legislature clearly sought to exclude would impose an excessive financial hardship. The BOARD already pays its fair share of the Simplified Municipal Telecommunications Tax. Further imposition of the Simplified Municipal Telecommunications Tax on an upgraded replacement data network would penalize the BOARD and all of the public safety member agencies.

On behalf of the BOARD, I thank you and your staff for considering and clarifying the tax exclusion to the Simplified Municipal Telecommunications Tax. Once again, thank you for your cooperation and concern in this very important matter.

DEPARTMENT'S RESPONSE:

The Simplified Municipal Telecommunications Tax Act authorizes municipalities to impose a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications in the municipality at the rate of up to 6% of the gross charges for such telecommunications purchased at retail from retailers (7% in Chicago). See 35 ILCS 636/5-10 and 5-15. The Telecommunications Excise Tax is a tax imposed state-wide 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. See 86 Ill. Adm. Code, Part 495. To the extent that telecommunications are taxed under the Simplified Telecommunications Tax Act by a municipality, those telecommunications are also taxed under the Telecommunications Excise Tax Act by the State of Illinois. This letter will address the Telecommunications Excise Tax.

Section 2(c) of the Telecommunications Excise Tax Act ("Act") provides that "telecommunications" does 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."

This exemption is further explained at 86 Ill. Adm. Code 495.100(d) to include charges for computer data, protocol conversions that permit computers to exchange data, no matter which languages or protocols a computer's out-put may be in, as well as charges for packet-switching, which groups data into packets for efficiency of transmission.

If a system such as a Synchronous Optical Network (SONET) is procured from a telecommunications provider, Telecommunications Excise Tax is imposed on the transmission services, if any, related to that network. It is not clear from the information submitted to the Department whether transmission services are part of what is provided. But, to the extent any transmission services are provided as part of a system such as a SONET, those are taxable.

If, as indicated in the letter submitted, the computer processing applications related to the network are used to act on the form, content, code and protocol of the information for purposes other than transmission, then those services are not subject to the Telecommunications Excise Tax. If that is the case, the computer processing application services provided in relation to a system such as a SONET would constitute the type of value-added services that are exempted from the definition of "telecommunications" under Section 2(c) of the Act. In that case, a purchaser of those services would

not incur Telecommunications Excise Tax upon the value-added computer processing application charges as long as the charges for such services are disaggregated and separately identified from other charges. (See 86 Ill. Admin. Code 495.100(a))

For further information on this subject, please refer to the following letters issued by the Department: ST 01-0132-GIL and ST 94-0464.

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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
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