

This letter concerns the taxation of air-to-ground telecommunications. See 35 ILCS 630/1 et seq. (This is a PLR.)

August 9, 2010

Dear Xxxxx:

This letter is in response to your letter dated November 3, 2008, and subsequent emails in which you requested a Private Letter Ruling on behalf of TAXPAYER. 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to TAXPAYER for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither TAXPAYER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of TAXPAYER, I am writing to request a private letter ruling regarding the proper Telecommunications Excise Tax ('telecommunications tax') treatment under Illinois law of a wireless Voice over Internet Protocol ('VoIP') telephone service (the 'Airline VoIP Service') that TAXPAYER plans to offer to airlines flying commercial routes throughout the United States that allows airline personnel to place and receive calls from aircraft in flight to and from other airline personnel at various ground locations. Because this offering is unique in the marketplace and presents a complex issue regarding the proper sourcing of a wireless air-to-ground communications service, TAXPAYER requests that the Illinois Department of Revenue (the 'Department') issue a private letter ruling with respect to the proper telecommunications tax treatment of the Airline VoIP Service under Illinois law.

Additional information concerning TAXPAYER, including its address and federal employer identification number is set forth in the attached Power of Attorney, which also evidences my authority to make this request on TAXPAYER's behalf. TAXPAYER makes this request on a prospective basis with respect to future tax periods in which

TAXPAYER offers the service to its airline customers. Because the service is new and unique to the marketplace, no audit or litigation concerning the Airline VoIP Service is pending with the Department. For the same reason, the issues raised in this request (or any similar issues) have not been ruled on by the Department except to the extent that the Department has concluded that VoIP telephone service is a form of telecommunications subject to the telecommunications tax as discussed below. TAXPAYER has not previously submitted this or any similar issue to the Department for consideration.

STATEMENT OF MATERIAL FACTS

TAXPAYER is a company specializing in airborne communications with offices in CITY1, Illinois and CITY, STATE, and a computer data center in CITY, Illinois (the 'CITY Data Center'). TAXPAYER has secured a license from the Federal Communications Commission to offer wireless services on commercial flights through the use of a Wi-Fi signal originating onboard the aircraft. TAXPAYER enters into contracts with commercial airlines to install on their aircraft certain TAXPAYER computer hardware necessary to provide the Wi-Fi signal and offers an array of services using that signal. The Wi-Fi signal permits transmissions of data, including voice data, from TAXPAYER-equipped aircraft to locations on the ground when the aircraft is at or above an altitude of 10,000 feet.

The Airline VoIP Service is one of the wireless services TAXPAYER offers. The Airline VoIP Service is presently available for use by personnel of the airlines with which TAXPAYER contracts (the 'airline customers'). The Airline VoIP service permits airline personnel on board TAXPAYER-equipped aircraft to place telephone calls to ground locations using a Wi-Fi signal and VoIP technology. Each TAXPAYER-equipped aircraft is equipped with a flight deck telephone handset and a crew telephone handset, each of which is capable of making and receiving telephone calls using VoIP technology. Each of the phones on the aircraft is assigned a telephone number that begin with the area code and prefix (XXX) XXX-XXXX. This area code and prefix are associated with the location of the CITY Data Center. The aircraft handsets are preprogrammed with the telephone numbers of ground facilities owned or operated by airline customers in Illinois and other states throughout the country.

When an airline crew member on an TAXPAYER-equipped flight dials a preprogrammed number on his or her handset, the call is transmitted by wireless signal from TAXPAYER computer equipment on board the aircraft to the nearest cellular telephone tower on the ground. The call is routed from that cell tower through a third party telecommunications network to the CITY Data Center. The call is then routed from the CITY Data Center to the public switched telephone network and sent on to the telephone associated with the preprogrammed number that has been dialed, the point of termination of the communication. To be clear, all voice calls from TAXPAYER-equipped aircraft are routed to TAXPAYER's CITY Data Center before they are routed to the public switched telephone network, even a call that originates from an aircraft in Washington State airspace that is first picked up by a cell tower in Washington State and ultimately connected to a telephone at a Washington State ground location would be routed through the CITY Data Center. In the Airline VoIP service, all roads lead through the CITY Data Center.

TAXPAYER charges its airline customers a flat monthly access fee (say, hypothetically, \$80 per month) for access to the Airline VoIP Service. This charge is assessed whether

or not the airline customer places any air-to-ground calls using the TAXPAYER equipment. In addition, TAXPAYER charges its airline customers a per minute fee (hypothetically; \$1 per minute) for all air-to-ground calls made using the TAXPAYER equipment. This charge is similar to a standard cellular telephone service package for which a customer pays a monthly fee plus a per minute of usage charge. Using the hypothetical figures listed above, an airline customer that makes twenty minutes worth of calls using the TAXPAYER equipment during a month would be charged \$100 for the Airline VoIP Service (\$80 for the access fee + \$20 in per minute charges).

STATEMENT OF LEGAL PRINCIPLES

Illinois imposes a tax on the act of originating or receiving intrastate or interstate telecommunications by persons in Illinois as a percentage of the gross charges for such telecommunications purchased at retail. 35 ILCS 630/3 & 4. 'Gross charges' include amounts paid for the act or privilege of originating or receiving telecommunications in Illinois and for all services and equipment provided in connection therewith. 35 ILCS 630/2(a). 'Amount paid' means the amount charged to the taxpayer's service address in Illinois regardless where such amount is billed or paid. 35 ILCS 630/2(b). While the sourcing of any forms of mobile telecommunications is governed by the Mobile Telecommunications Sourcing Act, 35 ILCS 638/1, *et seq.*, the sourcing of air-to-ground communications is not. 35 ILCS 638/15(c)(3). Rather, '[f]or air-to-ground systems and the like, service address shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.' 35 ILCS 630/2(n) (brackets added).

In a general letter ruling issued of January 12, 2005, the Department indicated that VoIP service constitutes telecommunications for purposes of the telecommunications tax. ST 05-0008 GIL (citing 35 ILCS 630(2)(c)). This position is consistent with the Internet Tax Freedom Act ('ITFA'), codified as a note to 47 U.S.C. 151, which excludes VoIP service from the general moratorium on the taxation of Internet access. See ITFA § 1105(5)(D) (voice service using Internet protocol not within statutory definition of 'Internet access').

APPLICATION OF LEGAL PRINCIPLES TO MATERIAL FACTS

TAXPAYER does not dispute that the Airline VoIP Service is an air-to-ground wireless telecommunications service that is potentially subject to the telecommunications tax if calls that originate or terminate on TAXPAYER equipment on board TAXPAYER-equipped aircraft are sourced to Illinois.

There is an inherent sourcing problem with a service such as the Airline VoIP Service, however. The physical location of an aircraft in flight is constantly changing. Thus, a call that originates in the airspace over Washington State may terminate in the airspace over Montana with the aircraft having passed through Idaho along the way.

To deal with this problem, the Illinois telecommunications tax law provides a sourcing rule based on the location of primary use by the taxpayer as determined by telephone number, authorization code, or billing address. TAXPAYER does not issue authorization codes, so that measure is not relevant. The billing addresses of TAXPAYER's customer reflect the location of their corporate headquarters. For that reason, they are not a good measure of an airline's place of primary use. Indeed, the taxable 'amount paid' for telecommunications service is defined by statute without regard to where the amount is

billed or paid. 35 ILC 630/2(b). That leaves the telephone number as the best measure of the taxpayer's primary place of use of the Airline VoIP Service.

The core feature of the Airline VoIP Service is the ability to make and receive telephone calls on wireless handsets assigned to individual aircraft. TAXPAYER equips its airline customers' aircraft with handsets that have phone numbers assigned to the area code and physical location associated with TAXPAYER's CITY Data Center, *i.e.*, **Illinois telephone numbers**. Moreover, the CITY Data Center is the physical location at which TAXPAYER provides the service of routing traffic from a third party telecommunications network to the public switched telephone network to complete calls between TAXPAYER-equipped aircraft and various ground locations throughout the country.

Applying the sourcing principles of the telecommunications tax discussed above to the Airline VoIP Service, TAXPAYER concludes that all calls that originate from or terminate at TAXPAYER-provided handsets on board its airline customers' aircraft should be sourced under Illinois law based on the telephone number assigned to those handsets. At present, those telephone numbers are associated with locations in Illinois, making all charges for the Airline VoIP Service subject to the Illinois telecommunications tax.

TAXPAYER requests that the Department issue a private letter ruling to TAXPAYER specifying how TAXPAYER should source the Airline VoIP Service under Illinois law that either affirms the foregoing analysis or explains in detail how the Department believes TAXPAYER should source its service.

Thank you for your prompt attention to this matter.

DEPARTMENT'S RULING:

Based on the representations in your letter and subsequent emails, it is the Department's understanding that TAXPAYER provides a wireless VoIP air-to-ground telephone service to airlines using a Wi-Fi signal (hereinafter, the "TAXPAYER Service"). The service permits airline employees to make telephone calls to airline ground facilities from handsets provided by TAXPAYER that are capable of making and receiving calls using VoIP technology. The handsets are preprogrammed with the telephone numbers of specific ground facilities owned or operated by the airline that are located in Illinois and in other states. The handsets are assigned telephone numbers that begin with an area code and prefix that are "associated" with TAXPAYER's CITY Data Center. Calls made by airline employees from the aircraft are transmitted from the handsets using TAXPAYER computer equipment on board the aircraft to the nearest cellular tower on the ground. Regardless of the aircrafts' locations, calls are routed from the cellular tower over telecommunications facilities owned by third parties to the CITY Data Center. The calls are then routed from the CITY Data Center to the public switched telephone network and transmitted to the preprogrammed locations that were dialed. The airlines are charged a flat monthly access fee and a per-minute fee for all calls. Telephone calls may also be made from the ground to an aircraft by dialing the number assigned to the handset on the aircraft.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications by a person in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 35 ILCS Sections 630/3 and 630/4. Telecommunications retailers collect tax from end users and remit it to the Department. See 86 Ill. Adm. Code 495.140. "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. See 35 ILCS 630/2(c).

"Gross charge" means, in part, 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. "Amount paid" means the amount charged to the taxpayer's service address in this State regardless of where such amount is billed or paid. "Service address" means the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, maritime systems, service address means the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. However, the Mobile Telecommunications Sourcing Conformity Act does not apply to air-to-ground radiotelephone service. 35 ILCS 638/15(c)(3). For air-to-ground systems and the like, service address shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent. 35 ILCS 630/2(n).

To determine the service address of the TAXPAYER Service that TAXPAYER provides to airlines, it is necessary to determine whether the service is a commercial mobile radio service subject to the Mobile Telecommunications Sourcing Conformity Act or an air-ground radiotelephone service. In response to a request for information from the Department regarding the nature of the license for the service being offered by TAXPAYER, you provided the Department with a copy of a *Report and Order* issued by the Federal Communications Commission ("FCC") establishing the parameters for an auction of air-ground licenses.¹ The Department located a *Public Notice* subsequently issued by the FCC on June 7, 2006, identifying the winner of the auction.² By email you explained to the Department the basis of TAXPAYER's right to use the license acquired by one of the bidders, COMPANY. Based on the Department's review of the FCC documents and your representation, it is the Department's position that the service being offered by TAXPAYER is an air-to-ground radiotelephone service; and, therefore, the Department's concludes that the service address for the TAXPAYER Service described herein shall be determined pursuant to the Telecommunications Excise Tax Act and not the Mobile Telecommunications Sourcing Conformity Act.

The retailer must collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications by the person in this State. In this case, the airline purchasing the TAXPAYER Service is the person originating or receiving intrastate or interstate telecommunications, or the taxpayer, for purposes of the Act, not TAXPAYER.

As noted above, "service address" for air-to-ground systems means the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent. The calls originate from equipment, or handsets, on airplanes that may be located anywhere in the United States at the time of the call, including Illinois, and terminate anywhere there are ground facilities owned by the airline and programmed into the handset, including Illinois. Calls may also originate from anyone on the ground by dialing the number of the handset on the aircraft; these calls may or may not originate in Illinois and may or may not terminate in Illinois. Although the telephone number assigned to the equipment is associated with a central office located in Illinois, neither the equipment nor the person originating or terminating the call may be in Illinois at the time the call is made.

TAXPAYER has stated that it does not issue authorization codes. The bills for the service may or may not be sent to the taxpayer at a location in Illinois.

For air-to-ground services, the assignment of a telephone number to equipment that is associated with a central office located in Illinois, without more, is insufficient to impose Telecommunications Excise Tax on an airline. However, if the airline originates or terminates calls on the equipment when the equipment is located in Illinois and the bill for the service is sent to an Illinois address, Telecommunications Excise Tax must be imposed and collected.

If TAXPAYER does not register and collect Telecommunications Excise Tax on calls made by customers originating or terminating in Illinois and which are billed to an Illinois address, TAXPAYER is responsible for paying Telecommunications Excise Tax on the telecommunications services it purchases to provide the TAXPAYER Service. It cannot give resale certificates to telecommunications companies that it purchases telecommunications services from to provide the TAXPAYER Service. If TAXPAYER collects Telecommunications Excise Tax on calls made by customers originating or terminating in Illinois and billed to an Illinois address, it may provide resale certificates to its suppliers if it registers with the Department as a reseller.

This ruling is based on the Department's understanding that the TAXPAYER Service is an air-to-ground service and is limited to such air-to-ground service. The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

TDC/RW:mks

¹ Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, WT Docket No. 03-103, Report and Order, 20 FCC Rcd. 4403 (2005)

² Auction of 800 MHz Air-Ground Radiotelephone Service License; Winning Bidders Announced For Auction No. 65, *Public Notice*, DA 06-1197 (June 6, 2007).