

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. See 35 ILCS 630/1 *et seq.* (This is a GIL.)

February 25, 2010

Dear Xxxxx:

This letter is in response to your letter dated December 30, 2009, 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:

Our company, develops billing software for telecommunications carriers. COMPANY assists its customers in ensuring that their tax databases are up-to-date and that all taxes are properly applied to subscriber bills.

We are contacting the Illinois Department of Revenue ('Department') to respectfully request a General Information Letter ('GIL') regarding the taxation of wireless Internet service that is either bundled with voice and other taxable services or sold separately.

Wireless providers often market and refer to Internet services as a data plan, but the service provided is essentially equivalent to that of a dial-up or broadband Internet access plan which one might subscribe to through their local phone company or cable provider. It essentially allows the subscriber to browse the Internet and send and receive e-mail in the same way they would on a land line connection, but on their wireless phone/device, instead of on their home PC. Additional charges may accrue for download of ringtones, songs, or other media to a wireless device.

We would like to know, to what extent, these services would be subject to Illinois sales taxes under the following scenarios:

1. A phone plan which provides unlimited long distance, air time, call waiting, call ID, text messaging, and data (Internet access) is sold for a single price of \$99/month.
2. A plan sold in addition to the basic wireless voice plan which provides unlimited data (Internet access) only for \$29/month.
3. A plan sold in addition to the basic wireless voice plan which provides for a limited amount of data (Internet access) 10MB for \$5/month, with each additional kilobyte at \$0.05.
4. A plan sold in addition to the basic wireless voice plan which provides for unlimited data (Internet access) and picture messaging for \$29/month.
5. A plan sold in addition to the basic wireless voice plan which provides for data (Internet access) based exclusively on usage at a rate of \$0.05/Kilobyte.
6. A plan sold in addition to the basic wireless voice plan which provides a limited menu of information including weather, trivia, sports, and stock information for \$4/month.
7. A plan sold in addition to the basic wireless voice plan which provides 24 hour access to health care professionals for medical questions for \$4/month.

Our company requests anonymity should your response be made public. Please do not hesitate to contact us should you have any questions regarding our inquiry.

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.” See 86 Ill. Adm. Code 495.100(c).

The Internet Tax Freedom Act imposes a federal moratorium on state or municipal taxes on Internet access until November 1, 2014. 47 USCA § 151 note; § 1101. “Internet access”:

(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold-

(i) to provide such service; or

(ii) to otherwise enable users to access content, information or other services offered over the Internet;

(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;

(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and

(E) includes a homepage, electronic mail and instant messaging (including voice and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access.

Telecommunications that are purchased, used or sold by a provider *to enable users to connect to the Internet or to otherwise enable users to access content, information or other services offered over the Internet* are subject to the federal moratorium. Thus, not all telecommunications are subject to the moratorium. In addition, paragraph D of the definition of “Internet access” excludes “voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E).” Therefore, telecommunications, including for example Voice over Internet Protocol (VoIP), that are not purchased, used or sold to a provider to enable users to connect to the Internet or to otherwise enable users to access content, information or other services offered over the Internet, are not subject to the federal moratorium and are subject to the Telecommunications Excise Tax.

Based on the limited information provided on the services described in your letter, some of the services may not be subject to Telecommunications Excise Tax, provided that the charges for such services are disaggregated and separately identified from other charges in the books and records of the telecommunications retailer. See 86 Ill. Adm. Code 495.100.

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

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