

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.)

April 6, 2011

Dear Xxxxx:

This letter is in response to your letter dated November 1, 2010, 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:

We request clarification of the law on the taxability of charges related to the provision of a wireless service that enables users to connect to the Internet over wireless carrier networks provided by wireless communications providers (Cellular and PCS Carriers). We have organized this request by first stating what we believe to be the relevant facts. We then outline the tax question we are attempting to address in the ‘Issues’ section. Following the ‘Issues’ section is a discussion of the relevant law and our conclusions for your confirmation or clarification. We understand that your conclusions will be based on the facts presented and that a change in the facts as we have described them may change the conclusion.

Facts

Company A is a commercial wireless broadband data service provider. Company A provides wireless Internet access connectivity primarily for retailers in the US, Canada and Puerto Rico. Retailers and other customers typically use the provided wireless broadband Internet access service to complete point-of-sale authorizations, maintain network continuity, perform file transfers, provide corporate email, and control employee Internet access content and other services from remote locations that are often underserved by Digital Subscriber Line (DSL) or cable Internet access service

providers. Company A provides these wireless broadband Internet access services to its customers by purchasing and reselling mobile broadband 'data plans' from cellular and PCS wireless carriers like Verizon, AT&T and Sprint. To the extent Company A aggregates the Internet access service from other products or services, Company A can reasonably identify the charges for Internet access service from its books and records kept in the regular course of business.

Company A does not purchase mobile telecommunications services as a separate or bundled service from the cellular and PCS wireless carriers, only a wireless broadband Internet access service ('data plan'). Nor does Company A provide voice, audio or video programming, or other products and services using Internet protocol for which there is a charge. The customers of Company A utilize this 'always on' wireless broadband connection over these wireless networks to conduct their business, including the services mentioned above to access the Internet and to access corporate data via the Internet.

Issues

1. Under the Regulations and Statutes of {STATE}, are the charges to Company A's customers for wireless (3G) broadband connection services taxable as a communications service?
2. Are these charges taxable if they are bundled with other taxable items or services?

Discussion of Applicable Law

The federal Internet Tax Freedom Act (ITFA) (P.L. 105-277, 112 Stat. 2681, 47 U.S.C. Sec. 151 note, amended by P.L. 107-75, P.L. 108-435, and P.L. 110-108) bars state and local governments from imposing multiple or discriminatory taxes on electronic commerce and taxes on Internet access. This moratorium expires on November 1, 2014.

Internet access definition – 'Internet access' means a service that enables users to connect to the Internet to access content, information, or other services. The definition includes the purchase, use, or sale of telecommunications by an Internet service provider to provide the service or otherwise enable users to access content, information, or other services offered over the Internet. It also includes incidental services such as home pages, electronic mail, instant messaging, video clips, and personal electronic storage capacity, whether or not packaged with service to access the Internet. However, 'Internet access' does not include voice, audio or video programming, or other products and services using Internet protocol for which there is a charge, regardless of whether the charge is bundled with charges for 'Internet access.'

Bundled services – The Act allows the taxation of otherwise exempt Internet access service charges that are aggregated (i.e. bundled) with and not separately stated from charges for telecommunications or other taxable services, unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

Conclusion

We believe the wireless broadband connection services purchased and resold by Company A meet the definition of Internet access service. Pursuant to the federal ITFA, and the moratorium that's in place on the taxation of Internet access services, we believe Company A's sales of wireless broadband connection services to its customers are not taxable. Additionally, we believe these services would not be taxable when bundled with other taxable items or services if they can be reasonably identified from Company A's books and records kept in the regular course of business. Company A would invoice and collect sales taxes for these other taxable services when or if it is required.

We appreciate your consideration of this matter. Your timely response is respectfully requested in order that our client can confirm its compliance with the state law as soon as possible. If you have any questions please feel free to call me.

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.

Your letter does not identify all the uses a customer may make of the wireless service sold by Company A. The wireless service Company A provides may be used to provide telecommunications services that are not subject to the moratorium and are subject to Telecommunications Excise Tax. Section 1106 of the Internet Tax Freedom Act states:

"If charges for Internet access are aggregated with and not separately stated from charges for telecommunications or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business."

Under the Department's regulations, non-taxable services are not 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

RSW:mzk