

This letter discusses the sales of cellular telephones when they are sold. 86 Ill. Adm. Code 130.101. (This is a GIL).

June 22, 2011

Dear Xxxxx:

This letter is in response to your letter received in this office on March 7, 2011, 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](http://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:

#### Background Facts

ABC, is an Illinois corporation engaged in the business of the sale of cellular communications products and services through its retail stores. One aspect of the corporation's business is selling cellular phone subscription plans from major carriers to the ultimate end users of said plans. One such plan is an account wherein the end user subscribes to pay a flat fee per month for an unlimited number of cellular minutes per month. Each month the user is required to pay the fee or the user is not able to use any of the minutes. Likewise, in the event of nonpayment, no minutes that were paid for from any previous month 'roll-over' into the new month. For each plan, the major carrier pays the telecommunications excise tax to State of Illinois.

#### Question Presented

Where a cellular phone customer subscribes to an arrangement with a major cellular carrier wherein said customer pays a monthly flat subscription fee to the carrier for the use of unlimited minutes per month on the carrier's network, is the retailer of said plan required to pay the Retailers' Occupation Tax on the monthly fee pursuant to 35 ILCS 120/2 and Section 130.101 of the Illinois Administrative Code?

## DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Retailers' Occupation Tax is measured by the sellers' gross receipts from sales of tangible personal property. If retailers sell cellular phones to their customers, the retailers incur Retailers' Occupation Tax measured by the gross receipts from the sales. At the time the retailers purchase cellular phones from their suppliers, the retailers should supply Certificates of Resale to their suppliers. Then, when the retailers sell the cellular phones, the retailers will pay Retailers' Occupation Tax based on the amount they receive from their customers. This amount represents the gross receipts received from the sale of the cellular phone. It is important that retailers be very careful when computing the amount of gross receipts from the sales of their cellular phones. "Gross receipts" means "all the consideration actually received by the seller, except traded-in tangible personal property" from all sources. See 86 Ill. Adm. Code 130.401. The retailers are required to collect a complementary Use Tax liability from their customers when the sales of the cellular phones occur. The tax should be listed as a separate item from the selling price of the equipment and not as an administration or service charge. See 86 Ill. Adm. Code § 150.135.

From the limited information contained in your letter, we cannot determine whether the Company is providing prepaid telephone calling arrangements. On and after January 1, 2001, prepaid telephone calling arrangements shall not be considered telecommunications subject to the Telecommunications Excise Tax. 35 ILCS 630/3 & 4. "Prepaid telephone calling arrangements" generally means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. "Prepaid telephone calling arrangements" include the recharge of a prepaid calling arrangement. "Prepaid telephone calling arrangement" does not however include an arrangement whereby a customer purchases a payment card and pursuant to which the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. 35 ILCS 120/2-27. Beginning January 1, 2001, prepaid telephone calling arrangements are considered tangible personal property subject to Retailers' Occupation Tax liability and not the Telecommunications Excise Tax. 35 ILCS 120/2. Prepaid telephone plans that do not meet the definition of a "prepaid telephone calling arrangement" are taxed under the Telecommunications Excise Tax.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://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