

This letter discusses "prepaid telephone calling arrangements". See 35 ILCS 120/2-7.
(This is a GIL.)

February 5, 2013

Dear:

This letter is in response to your letter dated December 26, 2012, 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:

COMPANY is a Competitive Local Exchange Carrier (CLEC) offering prepaid calling arrangement for home phone services to end users. The company respectively petitions the Illinois Department of Revenue to classify COMPANY as a "Prepaid Telephone Calling Arrangements" company based on the following:

1. COMPANY is registered as a prepay company with the Illinois Department of Revenue.
2. Our customers are not required to pass a personal credit check or sign a binding contractual agreement to receive prepaid home phone service from COMPANY.
3. COMPANY offers various types of prepay home phone service plans. The customer is allowed to prepay for home phone services calling time by purchasing one of the following service packages:
 - A. Total number of days of services
 - B. Full month of service
 - C. Total amount of calls
 - D. Specific amount of long distance minutes with their local plan
4. The customer is allowed to prepay for add-on calling features (For example, caller id and call waiting, etc.) or have specific calling features included in a prepaid package.
5. Upon receiving the customer's prepayment for home phone service, COMPANY manually programs our access codes to reflect the time and amount of services pre-purchased. After the information is successfully programmed, the customer can begin to use all available service options that have been paid for in advance.

6. Once the prepaid calling time has expired or has been completely consumed, no further service is provided unless purchased, replenished or recharged.

Therefore, COMPANY request classification as a "prepaid telephone calling arrangements company," based upon section 2-27 of the Retailers' Occupation Tax Act, 35 ILCS 120/2-27, where prepaid calling arrangement is defined as follows:

"Prepaid telephone calling arrangements" mean the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made 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. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act. "Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan.

COMPANY believes that it meets the "Prepaid telephone calling arrangements" requirements in accordance to 35 ILCS 120/2-27. COMPANY will use its business classification to ensure the proper taxes are rendered to the Illinois Department of Revenue. Please approve the company's request to receive the "Prepaid telephone calling arrangements" business classification. If you have any questions, you may reach me at X.

DEPARTMENT'S RESPONSE:

We cannot provide you with an opinion on the types of arrangements you describe in the context of a General Information Letter.

The Telecommunications Excise Tax Act ("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. See 35 ILCS 630/3 & 4 and 86 Ill. Adm. Code 495. The Act defines gross charges as including amounts 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 retailers. 35 ILCS 630/2(a).

Beginning January 1, 2001, prepaid telephone calling arrangements are considered tangible personal property subject to the tax imposed under the Retailers' Occupation Tax Act, regardless of the form in

which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. 35 ILCS 120/2. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption at a rate of 6.25%. Under the Use Tax Act, a tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer. The Use Tax Act applies when tangible personal property is purchased anywhere at retail. In essence, the retailer collects the Use Tax from the customer to reimburse it for the Retailers' Occupation Tax paid by it to the State. Prepaid telephone calling arrangements are also subject to retailers' occupation taxes imposed by units of local government.

"Prepaid telephone calling arrangements" mean the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made 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 include an arrangement whereby 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.

Prepaid telephone plans that do not meet the definition of a "prepaid telephone calling arrangement" are taxed under the Telecommunications Excise Tax. Paying in advance recurring monthly charges for telecommunications services obtained under a subscription plan does not convert telecommunications services into a prepaid telephone calling arrangement.

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