

This letter concerns the very limited exemptions from Telecommunications Excise Tax. See 35 ILCS 630/2. (This is a GIL.)

March 12, 2013

Dear:

This letter is in response to your letter dated February 19, 2013, 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:

I write to dispute the validity of the state and municipal excise taxes that are being billed to public school districts in Illinois on their telecommunications bills, and to request that the State of Illinois ("State") promptly discontinue and instruct all municipalities in Illinois to discontinue the billing of such taxes. As political subdivisions and instrumentalities of the State, public school districts are exempt from paying such taxes. 35 ILCS 630/2(k) ("Sale at retail" does not include Federal or State Governments). As you know, other political subdivisions and instrumentalities of the State are exempt from excise taxes, and we see no basis for treating public school districts differently. Also, the federal government is not authorized to bill federal excise taxes to public school districts in Illinois, and we see no reason that telecommunications providers should be charging state and municipal excise taxes to these entities.

These are not insignificant amounts. As you know, the state and municipal excise taxes on telecommunications bills often exceed 13% in total. This is money that public school districts should be using to educate students, not to fund other government projects. Of additional concern is that fact that most, if not all, public schools in Illinois receive a substantial portion of their telecommunications funding from the United States government through the federal E-Rate program. Requiring taxpayers to expend the limited resources of the federal government on Illinois state and municipal excise taxes (often at total rates in excess of 13%) puts an unreasonable burden on the E-Rate program. Under E-Rate, there is a finite pool of funds available to public schools throughout the nation to subsidize their qualified telecommunications expenses. The State and its municipalities are putting an unreasonable burden on the E-Rate program by requiring these excise taxes to be reimbursed, in large part, by the federal government through E-Rate. The State's charging of state and municipal excise taxes to public school districts in Illinois is clearly unreasonable and wrongfully deprives schools of necessary funds in violation of federal E-Rate law.

Having discussed these issues with staff at the Illinois Department of Revenue ("IDOR"), we are aware of no good faith basis for the State charging these excise taxes to public school districts. The explanations provided by IDOR are at best vague.

We hereby object to such charges and put the State on notice that the continued charging of these taxes is illegal, both under state and federal law. We also believe that these taxes are being charged in violation of the State and federal constitutions. Accordingly, we hereby request and demand that the State and its municipalities immediately cease and desist from collecting state and municipal telecommunications excise taxes from public school districts in Illinois, and that the State take all steps necessary to ensure that all such taxes collected be promptly reimbursed to all public school districts that were wrongfully charged.

Please contact me with any questions. We look forward to the State's prompt resolution of this matter.

DEPARTMENT'S RESPONSE:

The 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 only purchasers who can purchase telecommunications tax-free are the State and Federal governments, State Universities created by statute, and wholly owned corporate subsidiaries purchasing from the parent or other wholly owned subsidiary. 35 ILCS 630/2.

The exemptions provided in the Retailers' Occupation Tax Act (35 ILCS 120/), and related Tax Acts (generally referred to as "sales tax") are not incorporated by reference into the Telecommunications Excise Tax Act. Therefore, the exemptions contained in the Retailers' Occupation Tax Act are not available under the Telecommunications Excise Tax. The Act does not authorize an exemption for a purchase of telecommunications by units of local governments in Illinois, including school districts. Such purchases are fully subject to tax.

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
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