

ST 14-0047-GIL 09/09/14 TELECOMMUNICATIONS

This letter discusses allowable deductions and nontaxable sales under the Telecommunications Excise Tax. See 35 ILCS 630. (This is a GIL.)

September 9, 2014

Dear Xxxx:

This letter is in response to your letter dated July 17, 2014, 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 have a question concerning an allowable deductible in computing the TET. The DOR website lists allowable deductions and includes one that our Illinois auditor could not explain to me: **Sales in interstate commerce**. Can you define this or give me examples?

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 Act defines "gross charges" as the *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). "Amount paid" is the amount charged to the taxpayer's service address in this State regardless of where such amount is billed or paid. "Purchase at retail" means the acquisition, consumption or use of telecommunication through a *sale at retail*.

The Department's website identifies a number of "allowable deductions" or "nontaxable sales": sales for resale; sales in interstate commerce; sales to businesses certified by the Illinois Department of Commerce and Economic Opportunity and located in enterprise zones; sales to federal and state governments and to state universities for their use and not for resale; sales between a parent corporation and its subsidiaries provided there is no markup and the parent paid the tax to the telecommunications provider. These deductions or nontaxable sales cannot be found by reviewing any one section of the Act but must be determined by reviewing a number of definitions of words and phrases used in the Act. See also 86 Ill. Adm. Code 495.100 and 495.105.

“Telecommunications” does not include purchases of telecommunications for resale. “Gross charges” does not include charges received from sales to businesses certified by the Illinois Department of Commerce and Economic Opportunity and located in enterprise zones, and charges received from sales between a parent corporation and its subsidiaries. “Sale at retail” does not include the sale of telecommunications to federal and state governments and to state universities for their use and not for resale.

The Act does not exempt all sales in interstate commerce. Section 4 of the Act imposes a tax on the privilege of originating and receiving interstate telecommunications in this State. The call must be charged to the taxpayer’s service address in this State. Therefore, the Act imposes the tax on charges for an interstate call originating or received in Illinois when the call is charged to a service address in Illinois.

Section 4 of the Act contains language that states the tax “is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the State.” 35 ILCS 630/3 and 4. The United State Supreme Court had occasion to review the constitutionality of the Telecommunications Excise Tax Act in *Goldberg v. Sweet*, 488 U.S. 252 (1989). It determined that the Act “is consistent with the Commerce Clause” and “does not discriminate against interstate commerce.” *Goldberg* at 268.

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:ikm