

ST 15-0006-PLR 04/30/2015 MISCELLANEOUS: This letter discusses “prepaid telephone calling arrangements.” See 35 ILCS 120/2-7. (This is a PLR.)

April 30, 2015

Dear XXXX:

This letter is in response to your letter dated January 21, 2015, 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY. for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that COMPANY., nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

My firm represents the above-referenced taxpayer COMPANY. (“COMPANY” or the “Taxpayer”). A Form IL-2848 Power of Attorney (“POA”) is attached to hereto as Exhibit A. Pursuant to 2 Ill. Adm. Code 1200.110, this letter shall serve as COMPANY’s request for a Private Letter Ruling (“PLR”) from the Illinois Department of Revenue (the “Department”) concerning whether the Illinois sales tax (including Retailers Occupation Tax (“ROT”) and Use Tax) should be imposed on COMPANY’s sale of prepaid cellular (“cell”) phone service plans.

I. QUESTION PRESENTED

Is Illinois sales tax applicable to COMPANY’s sales of prepaid cell phone service plans?

II. STATEMENT OF MATERIAL FACTS AND LAW

Pursuant of 2 Ill. Adm. Code 1200.110(b)(1), the material facts are as follows: COMPANY is an Illinois corporation that owns and operates a major wireless communications service provider (the "Provider") retail franchise store located in COMPANY, Illinois ("the Store"). In addition to Provider brand cell phones and general cell phone accessories, COMPANY sells two general types of Provider cell phone service plans (the "Plan(s)"), the "MONTHLY PLAN" and the "DAILY PLAN." The Monthly Plans provide purchasers with an unlimited amount of cell phone usage for one month, with variable amounts of higher speed internet, for \$35, \$45, or \$55. Purchasers of the DAILY PLAN pay a minimum of \$10 for three days of unlimited cell phone usage. The Plans are compatible only with Provider brand cell phones.

When COMPANY sells a Plan at a Store, a sales representative accesses a Provider website for dealers, creates a customer account for the purchaser linked to the purchaser's Provider brand cell phone serial number, and inputs the purchaser's name, address and Plan information. Once the account is created, the website generates a phone number and an account number and the sales representative activates the purchaser's Provider cell phone. The sales representative then processes payment for the Plan through a third party payment processing company website which automatically receives the information from the purchaser's newly created Provider account. The Store sales representative charges the purchaser for the sale of the Plan immediately, and COMPANY is later billed by the Provider through the third party payment processing company for the sale of the Plan, minus COMPANY's percentage commission. A customer may purchase additional periods of service at any Provider franchise store, or at any retailer that processes the Provider's bill payments, including STORE 1, STORE 2 and STORE 3. However, the purchaser's cell phone service will cease after the period of time of the service purchased under a Plan has lapsed if no additional payment is made prior to that time. Further, if no additional payment is made within 60-90 days after the Plan has lapsed, the purchaser loses the cell phone number and account number created with the purchase of the Plan and a new account and cell number must be created and generated upon an additional Plan purchase. Purchasers have the option of setting up automatic service purchases and bill payments through the Provider website charged to the purchaser's credit card or similar account.

Since January 1, 2001, "prepaid telephone calling arrangements" are considered tangible personal property subject to Illinois sales tax regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. See 35 ILCS 120/2; see 35 ILCS 105/3. "Prepaid telephone calling arrangements" is defined under the Retailers' Occupation Tax Act ("ROTA") and the Use Tax to mean:

"[T]he 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.^{1/} 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.” See 35 ILCS 120/2-27; see 35 ILCS 105/3-27.

Prepaid telephone plans that do not meet the definition of a “prepaid telephone calling arrangement” are taxed under the Illinois Telecommunications Excise Tax¹ rather than the Illinois sales tax. See ST 12-0043-GIL; see 35 ILCS 630/3&4.

III. ISSUES AND ANALYSIS

It is unclear whether the Plans sold by COMPANY described above meet the definition of a “prepaid telephone calling arrangement” such that the Plans would be subject to Illinois sales tax. While the Plans do provide “telephone or telecommunications services that must be paid for in advance” and “for which payment to a retailer must be made in advance” pursuant to the definition, the Plans do not “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*” (emphasis added). Rather, the Plans are activated and payments are processed through a virtual online account. Thus, once the Plan and Provider cell phone are activated, no access number or authorization code must be entered to access the service. Moreover, it is unclear whether the Plans would meet the part of the “prepaid telephone calling arrangement” definition stating that “unless recharged, no further service is provided once that *prepaid amount of service*

¹ “Telecommunications” is defined in Section 2 of the Telecommunications Excise Tax Act as follows: “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. As used in this Act, “private line” means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of ‘telecommunications’ shall 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. ‘Telecommunications’ shall not include purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale.” See 35 ILCS 630/2(c).

has been consumed" (emphasis added), where the Plans discontinue after a period of time has lapsed unless additional service is purchased, but provide for unlimited telephone service within that period. The Plans are distinguishable from arrangements under which a prepaid amount of purchased service is consumed at a measurable rate, such as 10 cents per minute. Thus, the Plans appear to meet certain parts of the definition of "prepaid telephone calling arrangement" but not others.

COMPANY has been unable to locate any Illinois regulations, case law or administrative rulings analyzing whether services similar to the Plans would constitute "prepaid telephone calling arrangements" subject to the Illinois sales tax. (But see ST 11-0046-GIL – A taxpayer submitted a sales tax inquiry to the Department regarding a similar type of plan, but the inquiry was deemed too general for the Department to issue a PLR, attached hereto as Exhibit B.). However, the Department has commented that sales of prepaid calling arrangements are generally subject to both the sales tax and the Illinois Prepaid Wireless 9-1-1 Surcharge (the "Surcharge"), which Surcharge is imposed on the purchase of "prepaid wireless telecommunications service". See ST 12-0043-GIL; see 50 ILCS 753/10&15. While the Prepaid Wireless 9-1-1 Surcharge Act provides that "prepaid wireless telecommunications service" are "not sold or used pursuant to term contracts or subscriptions and monthly bills are not sent to consumers by prepaid wireless telecommunication service providers or retail vendors" but rather "such purchases are made on a cash-and-carry or pay-as-you-go" basis from retailers," other Department guidance suggests that the type of arrangement contemplated as a "prepaid wireless telecommunications service" would be equivalent to a prepaid calling card or minutes added to a pay-as-you-go" phone, which type of arrangements are distinguishable from the Plans discussed herein in that unlimited service under the Plans lapse upon the passage of a general designated period of time and not at a set rate per usage. See 50 ILCS 753/5; see Illinois Department of Revenue Information Bulletin No. FY 2012-01. Furthermore, although the Department has generally commented that "[p]aying in advance recurring monthly charges for telecommunications services obtained under a subscription plan does not convert telecommunications services into a prepaid telephone calling arrangement," it is unclear how a Plan purchased with automatic bill payments for continuous service differs significantly from continuing service under a subscription plan which contract period has expired. See ST 12-0014-GIL.

COMPANY is aware that some Provider franchisees are imposing the sales tax on their sales of the Plans, but that others are not. In view of the ambiguity concerning whether the described Plans would constitute "prepaid telephone calling arrangements" subject to the Illinois sales tax, guidance from the Department is warranted and COMPANY respectfully requests the issuance of a PLR from the Department regarding same.

IV. DISCLOSURES

Pursuant to 2 Ill. Adm. Code 1200.110(b)(3), the tax period at issue is July 2011 through the present. COMPANY is not involved in any currently pending audits or litigation with the Department.

Pursuant to 2 Ill. Adm. Code 1200.110(b)(4), to the best of this firm and COMPANY's knowledge, the Department has not previously ruled on the same or similar issue presented in this PLR request for COMPANY or a predecessor. Neither COMPANY nor any of its representatives have previously submitted the same or similar issue to the Department but withdrew it before a letter ruling was issued.

We look forward to the Department's response. Thank you for your consideration and assistance.

DEPARTMENT'S RESPONSE:

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).

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.

According to the Taxpayer, COMPANY sells two general types of cell phone service plans, the "MONTHLY PLAN" and the "DAILY PLAN." "The MONTHLY PLAN provide purchasers with an unlimited amount of cell phone usage for one month, with variable amounts of higher speed internet,

for \$35, \$45, or \$55. Purchasers of the DAILY PLAN pay a minimum of \$10 for three days of unlimited cell phone usage.”

The Monthly Plan and the Daily Plan are “prepaid telephone calling arrangements” subject to Retailers’ Occupation Tax. The Plans must be paid for by the customer in advance and enable the origination of one or more telephone calls or other telecommunications. The sales representative must enter information to activate or authorize the use of the purchaser’s cell phone. See ST 13-0053 (company manually enters information to activate prepaid calling arrangements). The definition of “prepaid telephone calling arrangements” does not require the taxpayer or the purchaser, once the Plan and Provider cell phone are activated, to enter an access number or authorization code every time a call is made.

The factual representations upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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
Chairman, Private Letter Ruling Committee

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