

ST-15-0028-GIL 05/14/2015 TELECOMMUNICATIONS EXCISE TAX

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495.

May 14, 2015

Dear XXXX:

This letter is in response to your letter dated January 26, 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.

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:

Please accept this letter as a formal request for a General Information Letter (“GIL”). We are seeking guidance on whether a client’s videoconferencing services are subject to taxation in the state of Illinois.

The Company is in the business of providing videoconferencing meeting suites throughout the U.S. and in numerous other countries. Its office is located in OUT OF STATE.

The Company has developed a network of approximately 1,000 operators of videoconferencing facilities throughout the world, and it refers to these operators as “affiliates.” The Company has no ownership interest in any of these affiliates. Upon the request of a customer that requires the use of a videoconferencing facility, it makes a reservation with an affiliate for the use of its room.

The following examples describe the Company’s services, which can be delivered in several different combinations based on customer need:

1. A customer with its own videoconferencing equipment might require the use of a remote videoconferencing facility (e.g., to interview a job candidate in a city in which the customer has no office). In this case, the Company identifies a local videoconferencing facility from its affiliate network and schedules the facility for its customer's use. The Company has no further involvement in the videoconference.

Resulting Transactions:

- The affiliate will invoice the Company for the use of the room, and the Company will then invoice its own customer for the room, plus a mark-up over the amount charged by the affiliate. The Company is effectively a broker in arranging for the facility.
2. Same scenario as example #1, but the customer requests that the Company provide "bridging services" for the videoconference. Bridging services are described as follows: the Company connects each participant by connecting the customer's videoconferencing device to the affiliate's videoconferencing device by using the public internet and the internet protocol ("IP") address of each device. This connection is made by an employee of the Company who utilizes its videoconference bridging equipment and connects the devices over the public internet using IP addresses. Once the connection is made, the Company's employee monitors the videoconference from start to finish and ensures the videoconference is not disconnected or that any problems are corrected.

Resulting Transactions:

- The affiliate will invoice the Company for the use of the room, and the Company will then invoice its own customer for the room, plus a mark-up over the amount charged by the affiliate.
 - The Company separately charges the customer a bridging service fee.
3. Same scenario as #1 and #2, but the customer has no access to the public internet; therefore, the Company connects the videoconference using an Integrated Services for Digital Network ("ISDN") connection.

A customer will utilize ISDN to connect its videoconferencing equipment to a remote videoconferencing facility or to the videoconference bridge instead of IP for the following reasons:

- That company may not have IP available at its physical office location to connect its videoconferencing room.
- That company may have IP available at its physical office location, but it is only utilized for standard internet and they have not configured the videoconferencing room to connect over IP.
- That company may prefer to continue to use ISDN as opposed to IP for perceived cost and security benefits or because of the lack of technology expertise to make that transition to IP.

ISDN is the older method for connecting videoconferencing facilities together. As the availability of IP has become more widespread, implementation costs and monthly costs have gone down, and higher IP speeds are available to create a higher-quality video

experience. As a result, more videoconferencing sites have made the transition to IP connections. There are some customers who have chosen not to make this change for the possible reasons listed above.

Resulting Transactions:

- The affiliate will invoice the Company for the use of the room, and the Company will then invoice its own customer for the room, plus a mark-up over the amount charged by the affiliate.
- The Company separately charges the customer a bridging service fee.
- The Company separately charges the customer ISDN fees for every 15-minute increment.
- The Company is invoiced by its supplier of ISDN connectivity for any ISDN charges incurred.

Illinois Department of Revenue General Information Letter No. ST 02-0035-GIL addresses the application of the State's telecommunication excise tax to videoconferencing services; however, the facts are slightly different than those of our client. The GIL offers three alternatives for sourcing videoconference services for purposes of collecting the telecommunications excise tax but does not provide any definitive direction on how the videoconferencing services should be sourced. Based on those reasons, we are not comfortable relying on the guidance provided in that GIL and are requesting further clarification.

Please verify (1) that the rental of a room used for videoconferencing purposes, described in examples one through three above, is not subject to the State's retailer's occupation tax, and (2) that the "bridging services," described in example two above, and the ISDN charges, described in example three above, are not subject to the State's telecommunications excise tax. If the ISDN connection fees are taxable telecommunication charges, should the client provide its resale certificate to its vendor to indicate that the purchase is tax exempt, or is it acceptable to collect tax from its customers on the mark-up only? Also, if the ISDN connection fees are taxable telecommunication charges, what is the appropriate method for sourcing the tax?

If any additional details are required to provide a determination of taxability, please contact NAME at XXX-XXX-XXXX. Thank you for your consideration.

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 to purchasers for use or consumption. 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then neither Illinois Retailers' Occupation Tax nor Use Tax would apply. Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to customers

incident to the services being provided, then no Illinois Service Occupation Tax or Service Use Tax would apply.

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 Simplified Municipal Telecommunications Tax Act allows municipalities to impose a tax on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by persons in Illinois at a rate not to exceed 6% for municipalities with a population of less than 500,000, and at a rate not to exceed 7% for municipalities with a population of 500,000 or more, of the gross charges for such telecommunications purchased at retail from retailers by such persons. 35 ILCS 636/5-10 and 5-15.

“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. “Telecommunications” do 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.” See 35 ILCS 630/2(a) and 2(c). If telecommunications retailers provide these services, the charges for each service must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not thus disaggregated, the entire charge is taxable as a sale of telecommunications.

“Gross charges” means the amount 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 a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever. “Gross charges” do not include “charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content.” See 86 Ill. Adm. Code 495.100(c).

The act or privilege of originating or receiving telecommunications in the State of Illinois shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from the Department and furnishes that number to the retailer in connection with certifying to the retailer that any sale to such person is nontaxable because of being a sale for resale. See 35 ILCS 630/8. Telecommunications Excise Tax liability would be incurred on all purchases of

telecommunications originating or received in Illinois prior to the resale number being issued and presented by the purchaser. See 35 ILCS 630/8.

If both taxable and non-taxable services are provided, the charges for each must be disaggregated and separately identified. See 86 Ill. Adm. Code 495.100(c). The statute does not require disaggregation on the customer's invoice, however. Therefore, it is the Department's position that so long as the non-telecommunications charges are disaggregated from the telecommunications charges in the retailer's books and records, for audit purposes, such disaggregation need not be shown on the customer's invoice. If the non-telecommunications charges are not disaggregated from the telecommunications charges, the full amount will be subject to Telecommunications Excise Tax. If none of the charges billed were for telecommunications, then none of the charges would be 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,

Debra M. Boggess
Associate Counsel

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