

ST 15-0034 GIL 06/18/2015 TELECOMMUNICATIONS EXCISE TAX

Telecommunications purchased, used, or sold by a provider of Internet access to provide Internet access are subject to the federal moratorium on state-imposed telecommunications taxes. See 47 USC § 151 note; § 1101.

June 18, 2015

Dear Mr. XXXX :

This letter is in response to your letter May 19, 2015, in which you requested 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:

My company provides rural broadband internet service wirelessly in COUNTY 1 and COUNTY 2 counties. We have been doing so since YEAR. We currently purchase internet bandwidth from COMPANY 1 to distribute to our customers.

Four months ago COMPANY 1 installed new software and 2 new taxes suddenly appeared on our bill: **IL State Public Utilities Tax** and **IL State & Local Excise Tax**. I have included a copy of our contract and our bill with this letter. Together these taxes were approximately 13.25% on our base monthly rate.

In XX years of business we had never seen such taxes on our purchased bandwidth, and having read the tariff we believed that the federal moratorium on charging for internet bandwidth was still in effect.

To clarify, we only provide internet service. We do not provide any telephone service. So, we are not a telecom company. We are strictly an internet provider. We

do not use any of this purchased bandwidth for our own telephone needs (we have separate bandwidth from COMPANY 2 for our in-house use).

We are requesting a Private Letter Ruling from the Illinois Department of Revenue on these two new taxes that COMPANY 1 has charged. Currently we have paid this tax for the last NUMBER months which we believe is not legal according to the IFTA.

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 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 Internet Tax Freedom Act imposes a federal moratorium on state or municipal taxes on Internet access until October 1, 2015. 47 USCA § 151 note; § 1101. "Internet access":

(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold-

(i) to provide such service; or

(ii) to otherwise enable users to access content, information or other services offered over the Internet;

(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;

(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and

(E) includes a homepage, electronic mail and instant messaging (including voice and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access.

Telecommunications that are purchased, used or sold by a provider to enable users to connect to the Internet or to otherwise enable users to access content, information or other services offered over the Internet are subject to the federal moratorium. 47 USCA § 151 note; § 1101(B). In ST 14-0043-GIL, the Department stated, “Generally, lit fiber strands sold to Internet Service Providers, or ISPs, who use the lit fibers to provide Internet access service to their customers are subject to federal moratorium under the Internet Tax Freedom Act and are not subject to Telecommunications Excise Tax during the moratorium.” In ST 09-0065-GIL, the Department stated, “The Internet Tax Freedom Act definition of “Internet access” is technology neutral.”

To the extent the Internet bandwidth services you purchase from COMPANY 1 are sold to, and purchased by, your customers to enable them to access content, information or other services over the Internet, the Internet bandwidth services would be subject to the moratorium.

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:mdb

