

ST 15-0046 GIL 07/10/2015 TELECOMMUNICATIONS EXCISE TAX

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois. See 35 ILCS 630/1 *et seq.*

July 10, 2015

Dear Mr. XXXX:

This letter is in response to your letter March 19, 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:

We are seeking a letter ruling on whether or not our client’s fees for texting services run through a cloud based software system and printer usage fees are subject to sales/use tax in Illinois.

Facts

Our Client, COMPANY, whose business is based in CITY, STATE, will be providing a texting service. This is a cloud based software service and does not require any downloads or tangible software installation for use. This is how it works, COMPANY has a customer such as a hotel, the hotel’s customers can text in a request for anything from an order to a question to a service request such as room reservation request. The hotel receives the text (through COMPANY’s cloud based software service) and the business is able to respond to their customer via text with a custom message or preset reply. The customer receives confirmation of their order or question via text.

Additionally, if COMPANY’s customers need to print, COMPANY provides a printer for this purpose. COMPANY purchases the printers ex-tax and provides them to their customers for a separately stated “Usage Fee”.

Our research shows that electronic transfers of data in your state are taxable. However, we do not know if this applies to our services as described above.

We respectfully request a written determination of the following: (Please assume that we have nexus in your state when making your determination.)

1. Are these cloud based software texting services subject to sales/use tax in your state?

2. Are the separately listed printer usage fees subject to sales/use tax in your state?

Since COMPANY operates in many states, it would be cumbersome to separate out inventory items that will be leased/rented in your state and pay use tax on those items prior to the lease/rental of the item in your state. We did read on the Department of Revenues [sic] website in some previously issued letter rulings (ST-15-0018 GIL, ST-12-0035 GIL and ST-12-005 GIL) that the lessor and lessee can make a private agreement for reimbursement of the tax to be paid by the lessee. If we purchase our printers ex-tax can we enter into a private agreement with the lessee for reimbursement of the tax by charging the lessee sales tax on the lease/rental amount? If so, do we need to have specific language on the invoice or in the lease agreement. Finally, can we separately state the tax on our invoices to the lessee?

3. Are there any other taxes, other than sales/use taxes, that these services as described above would be subject to in your state? (i.e. a separate telecommunications tax.)

COMPANY does not currently have nexus in your state. However, they anticipate entering your state in the near future. As such, if you could expedite your response it would be greatly appreciated.

Thank you for your considerations to these matters.

DEPARTMENT'S RESPONSE:

Sales Tax

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. See 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois, purchasers must self assess their Use Tax liability and remit it directly to the Department.

Retailers' Occupation and Use Taxes do not apply to sales of service. The Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If the transactions you are inquiring about do not involve the transfer of any tangible personal property to your customers, then they generally would not be subject to Service Occupation Tax or Service Use Tax.

I noted in your letter you stated “Our research shows that electronic transfers of data in your state are taxable.” I am not entirely clear exactly what that statement means, but I wanted to point out that the Department does not consider the viewing and downloading of text and similar data over the Internet such as downloaded books, musical recordings, newspapers or magazines to be the transfer of tangible personal property. These types of transactions represent the transfer of intangibles and are thus not subject to Retailers' Occupation and Use Tax. See 86 Ill. Adm. Code 130.2105.

Telecommunications Excise Tax

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. The incidence of the tax is on the person who originates or terminates intrastate or interstate telecommunications, and the tax is collected and remitted to the Department by the retailer of the telecommunications.

“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.

Leases

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if a lessor is guaranteed at the time of the lease that the leased property will be sold, that transaction is considered to be a conditional sale at the outset of the transaction. Persons who purchase items for resale under conditional sales contracts can avoid paying tax to suppliers by providing certificates of resale that contain all the information set forth in 86 Ill. Adm. Code 130.1405. All receipts received by a lessor/retailer under a conditional sales contract are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010. The lessors/retailers generally owe Retailers' Occupation Tax on any installment payments when they are received by the lessors/retailers. The lessees/purchasers owe

corresponding Use Tax on the amount of the installment payments that are collected by the lessors/retailers.

A true lease generally has no buy out provision at the close of the lease. If a buy-out provision does exist, it must be a fair market value buy-out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors of a true lease owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability. As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Under Illinois law, lessors may not “pass through” their tax obligation to lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where the lessees agree to reimburse the lessors for the amount of the tax paid, then the lessees are obligated to fulfill the terms of the private contractual agreements.

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

DMB:mdb