

In general, Voice Over Internet Protocol ("VOIP") is telecommunications subject to tax within the meaning of "Telecommunications" and "Gross Charges" pursuant to The Telecommunications Excise Tax, 35 ILCS 630/2; the Telecommunications Infrastructure Maintenance Fee, 35 ILCS 635/10; and the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-7. (This is a GIL.)

April 13, 2021

Dear NAME:

This letter is in response to your letter dated February 22, 2021, 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](http://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:

RE: General Information Letter under 2 Illinois Administrative Code  
1200.120

To whom it may concern.

ACCOUNTANT represents several clients in Illinois who are subject to the Simplified Municipal Tax. Many of those providers are provisioning voice service to Enterprise end users.

Recently one of our clients was notified by their client (located in Illinois) that they did not believe they were subject to the Simplified Municipal [Telecommunications] Tax for voice service provisioned over "Voice over Internet Protocol (I VoIP) lines. They cited Tax Regulation 35 ILCS 636/5-1 as the basis for their position. Specifically, the statutory exemption for data or email transmitted over a VoIP line.

We point to the broad definition of "Telecommunications " within the statute.

*"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"*

We believe that the client's interpretation is incorrect, specifically that the exemption is for data transmission only, and that voice communication over a VoIP line is assessable for the Simplified Municipal [Telecommunications] Tax. We have confirmed this with other sources that provide tax services and found this position to be correct.

We would appreciate your response to the question regarding the assessability of voice transmission over an I VoIP line. You can contact me directly if you have any questions or need further clarification.

#### **DEPARTMENT'S RESPONSE:**

The 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 tax imposed shall be collected from the taxpayer by a retailer maintaining a place of business in this State and remitted to the Department, 35 ILCS 630/5. 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.

"Gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State, or in such municipality, 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. See 35 ILCS 630/2(a) and 35 ILCS 636/5-7.

Further, the definition of telecommunications under each Act is very broad and encompasses Voice Over Internet Protocol communications. More specifically, both Acts define "Telecommunications" as, in addition to the meaning ordinarily and popularly ascribed to that term, including, 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. See 35 ILCS 636/5-7 and 35 ILCS 630(2)(c). "Telecommunications" does 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.*" (Emphasis added.) See 35 ILCS 636/5-7 and 35 ILCS 630/2(c).

Voice Over Internet Protocol ("VoIP") is telecommunications subject to tax within the meaning of "Telecommunications" and "Gross Charges" pursuant to The Telecommunications Excise Tax, 86 Ill. Adm. Code 495.100; the Telecommunications Infrastructure Maintenance Fee, 35 ILCS 635/10; and the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-7. Neither the Telecommunications Excise Tax Act nor the Simplified Municipal Telecommunications Tax Act provide any exemption for VoIP services.

Further, federal law has preserved States' ability to tax VoIP services. The Internet Tax Freedom Act imposes a federal moratorium on state or municipal taxes on Internet access. 47 USCA § 151 note; § 1101. However, states are allowed to tax VoIP services as Congress specifically excluded them, defining "Internet access" as:

(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;

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(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.

*(Emphasis added.)* 47 USCA § 151 note; § 1105. Additionally, in a note on section 152 of the Federal Communications Act (of which the Internet Tax Freedom Act is a part), Congress specified, in relevant part, that nothing in the Act or the amendments made by it “shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation,” subject to certain unrelated exceptions. See Pub. L. 104-104, Title VI, §601, 110 Stat. 143, 47 U.S.C. §152 note (1996) (“Pub. L. 104-104”).

As such, VoIP communications either originating in or received in a municipality that has imposed the Simplified Municipal Telecommunications Tax are subject to the applicable tax rate for that municipality. Additionally, VoIP communications are subject to the Illinois Telecommunications Excise Tax.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Alexis K. Overstreet  
Associate Counsel

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