

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Telecommunications Excise Tax
- 2) Code Citation: 86 Ill. Adm. Code 495
- 3) Section Number: 495.100 Proposed Action: Amendment
- 4) Statutory Authority: Implementing the Telecommunications Excise Tax Act [35 ILCS 630] and authorized by Section 17 of the Telecommunications Excise Tax Act [35 ILCS 630/17].
- 5) A Complete Description of the Subjects and Issues Involved: Section 495.100 is amended to comply with the Internet Tax Freedom Act, 47 USCA § 151. Statutory language regarding what is not included in gross charges is also inserted from the Telecommunications Excise Tax Act. This language, states among other things, that gross charges do not include charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act, or under Section 95 of the Reimagining Energy and Vehicles in Illinois Act ("REV Illinois Act") (20 ILCS 686/1 et seq.), or under the Manufacturing Illinois Chips for Real Opportunity ("MICRO") Act (35 ILCS 45/110-1 et seq.), to the extent of such exemption and during the period of time specified by the Department of Commerce and Economic Opportunity ("DCEO").
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect: No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed

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rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

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Associate Counsel
Legal Services Office - Sales and Excise Tax Policy
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Springfield, Illinois 62794

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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Telecommunications retailers
 - B) Reporting, bookkeeping or other procedures required for compliance:
General bookkeeping
 - C) Types of professional skills necessary for compliance: Accounting, bookkeeping, sales tax compliance
- 14) Small Business Impact Analysis:
- A) Types of businesses subject to the proposed rule:
44-45 Retail Trade
 - B) Categories that the agency reasonably believes the rulemaking will impact, including:
 - ii. regulatory requirements
 - viii. record keeping
- 15) Regulatory Agenda on which this rulemaking was summarized: January 2024

The full text of the Proposed Amendment begins on the next page:

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Section 495.100 Meaning of "Gross Charges"

- a) *"Gross charge" 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 those telecommunications, the cost of materials used, labor or service cost or any other expense whatsoever.* (Section 2(a) of the Telecommunications Excise Tax Act ("the Act") [35 ILCS 630/2(a)] A retailer may provide services to customers that are not provided in connection with originating or receiving telecommunications. If those services are not necessary for or directly related to the retailer's provision of telecommunications to customers and the charges for the services are disaggregated and separately identified from other charges, the charges need not be included in "Gross charges". Without limitation, examples of services not included in "Gross charges" are directory advertising; specialized designing and/or engineering services; specialized security measures; and consulting services.
- b) *"Gross charges" shall not include charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein those charges are disaggregated and separately identified from other charges (~~Section 2(a)(4) of the Act~~). [35 ILCS 630/2(a)(4)]* Customer equipment includes, but is not limited to, all items generally classified as customer equipment or terminal equipment, such as telephone instruments and station sets, dialers, modems, private branch exchanges (PBXs), inside wiring, facsimile machines, pagers and non-electronic associated items such as documentation, manuals and furniture. Items of customer equipment, including maintenance and miscellaneous services, may be leased, rented or sold to one customer or a group of customers without being included in the gross charges, but will be subject to retailers' ~~retailer's~~ occupation or use taxes. To be exempt, the charges for customer equipment must be disaggregated and separately identified from other charges in the books and records of the retailer.
- c) *"Gross charges" does not include:*

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- 1) Any amounts added to a purchaser's bill because of a charge made pursuant to
 - A) the tax imposed by the Telecommunications Excise Tax Act (35 ILCS 630/1 et seq.);
 - B) charges added to customers' bills pursuant to the provisions of Sections 9-221 or 9-222 of the Public Utilities Act (220 ILCS 5/9-221, 222), as amended, or any similar charges added to customers' bills by retailers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in such provisions of the Public Utilities Act;
 - C) the tax imposed by Section 4251 of the Internal Revenue Code (26 USCA § 4251);
 - D) 911 surcharges; or
 - E) the tax imposed by the Simplified Municipal Telecommunications Tax Act (35 ILCS 636/5-1 et seq.). [35 ILCS 630/2(a)(1)]
- 2) Charges for a sent collect telecommunication received outside of the State. [35 ILCS 630/2(a)(2)]
- 3) Charges ~~charges~~ for leased time on equipment or charges for the storage of data or information for subsequent retrieval or ~~charges for the processing of data or information intended to change its form or content (Section 2(a)(3) of the Act).~~ [35 ILCS 630/2(a)(3)]

Charges for answering services, for example, whether provided electronically or by live operators, represent charges for the storage of information or data for subsequent retrieval, and are not subject to tax, provided that these charges, if provided in connection with taxable telecommunications, are disaggregated and separately identified in the books and records of the retailer. Charges for automated data storage, retrieval and processing services or for the use of computer time or other equipment are not included in gross charges. Automated information retrieval or data processing

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charges are not included in gross charges. For example, a customer who accesses an on-line computer data base would not be subject to tax on the charge for the data processing or inquiry, but would be subject to tax on the charge for the transmission of the data. If a telecommunications retailer provides both transmission and data processing services, the charges for each must be disaggregated and separately identified in the books and records of the retailer. See 35 ILCS 630/2(a)(10).

- 4) Charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act (220 ILCS 5/9-222.1), as amended, or under Section 95 of the Reimagining Energy and Vehicles in Illinois Act (20 ILCS 686/95), to the extent of such exemption and during the period of time specified by the Department of Commerce and Economic Opportunity. [35 ILCS 630/2(a)(5)]
- 5) Charges to business enterprises certified under the Manufacturing Illinois Chips for Real Opportunity (MICRO) Act (35 ILCS 45/110-1 et seq.), to the extent of the exemption and during the period of time specified by the Department of Commerce and Economic Opportunity. [35 ILCS 630/2(a)(5.1)]
- 6) Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under by the Telecommunications Excise Tax Act (35 ILCS 630/1 et seq.) has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service. [35 ILCS 630/2(a)(6)]
- 7) Bad debts. Bad debt means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectable, as determined under applicable federal income tax standards. If the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the

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reporting period in which the payment is made. [35 ILCS 630/2(a)(7)]

- 8) Charges paid by inserting coins in coin-operated telecommunication devices. [35 ILCS 630/2(a)(8)]
- 9) Amounts paid by telecommunications retailers under the Telecommunications Municipal Infrastructure Maintenance Fee Act (35 ILCS 635/1 et seq.). [35 ILCS 630/2(a)(9)]
- 10) Charges for nontaxable services or telecommunications if
- A) those charges are aggregated with other charges for telecommunications that are taxable,
 - B) those charges are not separately stated on the customer bill or invoice, and
 - C) the retailer can reasonably identify the nontaxable charges on the retailer's books and records kept in the regular course of business. If the nontaxable charges cannot reasonably be identified, the gross charge from the sale of both taxable and nontaxable services or telecommunications billed on a combined basis shall be attributed to the taxable services or telecommunications. The burden of proving nontaxable charges shall be on the retailer of the telecommunications. [35 ILCS 630/2(a)(10)]
- d) 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 are exempt ~~(Section 2(c) of the Act)~~. [35 ILCS 630/2(c)] For example, the charges for computer data, protocol conversions that permit computers to exchange data, no matter which languages or protocols a computer's out-put may be in, and packet-switching, which groups data into packets for efficiency of transmission, would be exempt.

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- e) Advertising revenue either from online directory sales (e.g., yellow pages) or from message additions to telecommunications service are not included in gross charges. For example, revenues from an advertising message preceding a time/weather call are not included in gross charges.
- f) Contributions to a telethon fund-raising campaign are not included in gross charges.
- g) Gross charges shall include, but are not limited to, charges for unlisted or unpublished numbers, operator assistance, directory information, call-waiting, call-forwarding, and burglar alarm services provided by telecommunications retailers.
- h) A caller located in Illinois who calls a 900 number and receives a billing for that call at ~~the caller's~~ service address will have made a call subject to ~~telecommunications excise tax~~Telecommunications Excise Tax. The invoice to the caller for a 900 number call need not separately state the line charge and tax specifically. However, the telecommunications retailer is responsible for remitting the tax due on the line charge.
- i) Gross charges shall include the transmission charges for premium services. Time/weather, gab line/party line and other public announcement services of information and entertainment, and charges for the message content or information of those services, are not included in gross charges.

EXAMPLE: A call to a 900 code number is made to register an opinion in a poll. The caller is billed \$1.00. \$.80 is the transmission charge. \$.80 is included in gross charges.

- j) Charges for billing and collection received by telecommunications retailers from persons selling services or products to the telecommunications ~~retailers'~~ ~~retailer's~~ customers, which are billed and collected by the telecommunications ~~retailers'~~ ~~retailer~~, are not included in gross charges.

EXAMPLE: A call to a 900 code number to sell a product is billed by the telecommunications retailer as follows:

\$25.00 service charge to caller for product or service

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\$.30 call charge (15¢ call, 15¢ billing and collection)
\$.15 billing and collection charge is not included in gross charges
\$25.00 is not included in gross charges
\$.15 is included in gross charge

- k) Billing and collections charges paid by persons selling services or products to telecommunications retailers' ~~retailer's~~ customers or billing and collections charges paid by telecommunications retailers to credit card companies whose holders have charged calls are not includable in gross charges.
- l) Taxes imposed on consumers for community 911 service, lifeline service or other services required by regulatory authorities or government are not includable in gross charges.
- m) Telecommunications that are purchased, used or sold by a telecommunications provider to enable users to connect to the Internet or to otherwise enable users to access content, information electronic mail, or other services offered over the Internet are exempt from tax due to the federal Internet Tax Freedom Act (47 USCA § 151) which preempts state and local governments from levying taxes on Internet access. 47 USCA § 151 note; § 1101(a), (d)(3)(D). For example, data plans provided by mobile or wireless telecommunications providers generally are subject to the federal moratorium. Generally, persons that provide customers access to the Internet (Internet Service Providers or ISPs) and who do not, as part of that service, charge customers for the line or other transmission charges that are used to obtain access to the ISP's server or other point of access, are not considered to be telecommunications retailers from these activities. This is the case so long as such ISPs do not, as part of their billing, charge customers for those line charges and instead pay their telecommunications suppliers all transmission costs that they incur in providing the Internet service. In this situation, an ISP's customer pays his or her telecommunications supplier for all transmission costs incurred while using the service. The single monthly fee charged by the ISP, which often represents a flat charge for a package of items including Internet access, e-mail, and electronic newsletters, would generally not be subject to tax. If, however, the ISP charges customers for line or other transmission charges, it should provide its telecommunications suppliers

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~~with Certificates of Resale and should collect and remit the tax. For example, if an ISP provides customers with Internet access, as described in this subsection, but also provides customers the use of a 1-800 service to access the ISP, and separately assesses customers per minute charges for the use of the 1-800 service, the ISP is considered a telecommunications retailer and incurs Telecommunications Excise Tax on the charges made for the 1-800 service. If the charges are not disaggregated as provided in subsection (c), all charges are subject to the Telecommunications Excise Tax.~~

- n) *"Gross charges" for private line service shall include:*
- 1) *charges imposed at each channel point within this State;*
 - 2) *charges for the channel mileage between each channel point within this State; and*
 - 3) *charges for that portion of the interstate inter-office channel provided within Illinois. Charges for that portion of the interstate inter-office channel provided in Illinois shall be determined by the retailer as follows:*
 - A) *For interstate inter-office channels having 2 channel termination points, only one of which is in Illinois, tax may be imposed on 50% of the total charge imposed. For example, tax would be imposed on 50% of the total charge for a private line with one termination point in Chicago and one termination point in San Francisco.*
 - B) *For interstate inter-office channels having more than 2 channel termination points, one or more of which are in Illinois, tax may be imposed on an amount equal to the total charge multiplied by a fraction, the numerator of which is the number of channel termination points within Illinois and the denominator of which is the total number of channel termination points. For example, Illinois would receive tax on 60% of the total charge for a private line that had 3 termination points in Illinois, 1 termination point in New York and 1 termination point in Los Angeles. Using the same*

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apportionment rule, New York and Los Angeles would each receive tax on 20% of the total charge.

- C) Tax may be imposed using any *other method that reasonably apportions the total charges for interstate inter-office channels among the states in which channel termination points are located.* [35 ILCS 630/2(a)] ~~(Section 2(a) of the Act)~~ For instance, the Illinois mileage of the channel could be calculated by determining a fraction, the numerator of which is the actual measured Illinois miles of that channel and the denominator of which is the actual measured route miles of the entire channel. If it is impossible for a retailer to measure actual route miles, a method that accurately approximates the Illinois route miles of an interstate inter-office channel and accurately approximates the route miles of the entire channel can be used (e.g., the use of straight-line air miles). Any method of approximation used by a telecommunications provider shall be subject to verification by the Department.

(Source: Amended at 48 Ill. Reg. _____, effective _____)