

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 35 ILCS 630/1 *et seq.* (This is a GIL.)

June 7, 2010

Dear Xxxxx:

This letter is in response to your letter dated April 19, 2010, 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](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:

Our company develops billing software for telecommunications carriers. COMPANY assists its customers in ensuring that their tax databases are up-to-date and that all taxes are properly applied to subscriber bills.

We are contacting the Illinois Department of Revenue ('Department') to respectfully request a General Information Letter ('GIL') regarding the taxation of wireless Internet service that is either bundled with voice and other taxable services or sold separately.

#### Background

We need to understand the correct sales tax treatment for Internet access plans that are offered by wireless telephone service carriers; such plans may be bundled with other taxable services or sold for separately stated prices.

Wireless providers often market and refer to Internet access service as 'data' plans, but the service provided is essentially equivalent to a dial-up or broadband Internet access plan that one might subscribe to through their local telephone company or cable provider. Except as otherwise indicated, the term 'Internet access' as used in this inquiry is consistent with the *Internet Tax Freedom Act Amendments Act of 2007*, which defines Internet access as:

...a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet...includes services...such as a homepage, electronic mail and instant messaging...video clips, and personal electronic storage capacity...

Wireless Internet access essentially allows for the same functionality they would receive on a landline connect but on their wireless telephone instead of their personal computer. Additional charges may accrue for download of ringtones, songs, or other media to a wireless device.

We would like to know, to what extent, the plans identified in the following scenarios would be subject to Illinois sales taxes:

1. A plan that provides unlimited long distance, air time, call waiting, call ID, text messaging, and data (Internet access) is sold for a single price of \$99/month.

[NOTE: Scenarios 2-7 deal with plans that are sold to the consumer in addition to the basic wireless voice plan and for a separately stated fee.]

2. Plan provides unlimited data\* (Internet access) only for \$29/month.
3. Plan provides a limited amount of data (Internet access) 10MB for \$5/month, with each additional kilobyte at \$0.05.
4. Plan provides unlimited data (Internet access) and picture messaging for \$29/month. We define 'picture messaging' as the transmission of pictures from one cellular telephone (taken, most commonly, with a cell phone camera or similar device) to email recipients or other cell phone users.
5. Plan provides data (Internet access) based exclusively on usage at a rate of \$0.05/Kilobyte.
6. Plan provides a menu of information including weather, trivia, sports, and stock information for \$4/month. This 'menu' plan has following [sic] characteristics:
  - Access to this plan's information services is provided via an Internet connection.
  - The consumer is not paying separately for basic Internet access and information services. The \$4.00 charge covers both of these components. The consumer cannot use one of these components without the other.
  - The consumer is limited to a fixed set of menu options. The consumer utilizes the plan by scrolling through the menu options listed on the screen of their cellular telephone. The consumer's

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\* The 'amount' of 'data' (Internet access), as used in scenarios 2-5, does not refer to storage capacity (i.e., how much downloaded material can be saved or stored over time). Data capacity in these scenarios refers to the ability to access and download (open up) material on the Internet. For example, 'unlimited' capacity means the end user can access and open a 15 MB file while on-line without incurring any additional charge. If the consumer had #3, they could still open up the 15 MB file but would incur additional charges for the extra 5 MB. The amount of 'data' access refers to the total network capacity the consumer using at any given time.

selection provides them with a fairly concise set of information which is displayed on the cell home screen (such as the final score of a sporting event).

- The information the consumer can retrieve with any given menu selection is further limited by a predetermined set of preferences. For example, a consumer may only be able to track weather conditions for a maximum of three different cities or games scores for a maximum of four different sports teams. (NOTE: To change their preferences, either the consumer or the wireless service provider would have to reset the 'preferences' of their service account or cell phone.)
- The consumer is not provided with fully functional Internet access that allows for web-browsing or connectivity to any site that they may wish to visit. The use of the Internet is largely hidden from the consumer.
- The consumer does not directly subscribe to any news or information service that is the underlying source for the information provided to them. The underlying source may not even be displayed in the consumer's selection.

7. Plan provides consumers with 24 hour access to medical consultation. There are three different versions of this plan (see below). The following types of access may be offered with this plan:

- I. Direct contact with a 'live' healthcare professional.
- II. Access to a database of prerecorded messages (provided aurally, textually, or visually) related to various health topics. The consumer may either access the database directly or with the assistance of a healthcare professional.

The customer is billed a monthly recurring charge for the plan and may also be charged for per minute usage depending whether they opt for a higher or lower monthly fee.

Plan A: Internet access is not used to connect the subscriber to the consultation service. Both types of access (I & II above) are available.

Plan B: Internet access is used to connect the subscriber to the consultation service. The consumer does not have the option to speak directly to (or obtain assistance from) a health professional but instead can only access the prerecorded message database set forth in II above.

Plan C: Internet access is used to connect the subscriber to the message database set forth in II above. The consumer also has the option to speak directly to (or obtain assistance from) a health professional as set forth in II above.

Please let us know how the charges for these various offerings should be taxed so that we can ensure correct taxes are being collected from subscribers.

Our company requests anonymity should your response be made public. Please do not hesitate to contact us should you have any questions regarding our inquiry.

## **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 November 1, 2014. 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. Thus, not all telecommunications are subject to the moratorium. In addition, paragraph D of the definition of "Internet access" excludes "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)." Therefore, telecommunications, including for example Voice over Internet Protocol (VoIP), that are not purchased, used or sold to 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 not subject to the federal moratorium and are subject to the Telecommunications Excise Tax.

Generally, charges for chat line services, other than the charges for transmission, are not subject to Telecommunications Excise Tax. See 86 Ill. Adm. Code 495.100(i). Section 495.100(i) states that, "[g]ross 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 such services, are not included in gross charges." Please note that charges for such services are not subject to Telecommunications Excise Tax provided that the charges for such services are disaggregated and separately identified from other charges in the books and records of the telecommunications retailer. See 86 Ill. Adm. Code 495.100.

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,

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