

Persons who provide satellite television services, including basic network channels, premium channels, pay per view movies, sporting events, etc., are generally not subject to the Telecommunications Excise Tax liability. See 35 ILCS 630/1 et. seq. (This is a GIL.)

August 3, 2010

Dear Xxxxx:

This letter is in response to your letter dated June 8, 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 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:

ABC is writing the Illinois Department of Revenue under Illinois Administrative Code **TITLE 2: GOVERNMENTAL ORGANIZATION Section 1200.120 General Information Letters.**

ABC is seeking an answer to 4 questions concerning the levy of franchise fees on cable services versus no levy of any franchise fee or equivalent on satellite-based services.

Background:

Basis of Inquiry: ABC’s inquiry is on behalf of our municipal clients who have lost revenue due to businesses and residents switching from cable services to satellite based services. ABC is examining options in an attempt to create parity between franchise fees on cable and possible taxation on satellite services.

Who is ABC: ABC is a utility tax auditor. ABC reviews the collection of municipal utility taxes, franchise fees or user fees collected by natural gas, electricity, cable and water utilities on behalf of municipalities within Illinois.

Facts:

Cable Franchise Fee: Many municipalities charge a franchise fee on the gross revenues earned by cable companies operating within their incorporated boundaries. Typically a municipality will have an agreement with the cable company stating:

The grantee, shall pay to the village on a quarterly basis, an amount equal to five percent (5%) per year of grantee's annual gross revenue as permitted by law..'Gross revenue' shall be defined in detail in a separate section of this article. Should the law permit an increase in the percentage of gross revenues to be collected by the franchising authority as franchise fees, the parties will meet and confer to discuss the ramifications of such increase on subscriber bills. In accordance with applicable law increases in franchise fees may be levied by the village by ordinance after ninety (90) days' advance written notice is given to grantee.

Gross Revenues: Gross revenues are typically defined as follows:

Gross revenues means and includes all revenue received by a grantee derived from and in connection with the operation of the grantee's cable system to provide cable service within the village, including, but not limited to, revenues, fees, receipts or charges from or for:

- 1.) basic tier cable service;*
- 2.) any tier of video programming service other than basic service;*
- 3.) any optional, premium, per channel or per program service;*
- 4.) any installation, disconnection, reconnection, change-in-service or other customer service;*
- 5.) rentals of converters, remotes or other customer premises equipment;*
- 6.) provision of data services such as internet services carried over the cable system which are cable services;*
- 7.) commercial leased channels or channel access;*
- 8.) advertising revenues (including infomercials); including a per subscriber share of revenues for grantee's subscribers within the village which is received for advertising carried on one or more cable systems in addition to the grantee's cable system within the village;*
- 9.) revenues from home shopping channels;*
- 10.) the sales of programming guides, and such other revenue sources from the provision of cable service as may now exist or hereafter develop, provided that such revenues, fees, receipts or charges may lawfully be included in the gross revenue base on which the village may calculate and collect franchise fees.*

Gross revenues shall not include any amounts refunded to subscribers, any unpaid subscriber or advertiser accounts and any sales tax, telecommunications tax, utility message tax or other taxes imposed directly upon any subscriber or user by the village, the state or other governmental unit and collected by the grantee on behalf of and for remittance to the village, the state or other governmental unit. As used herein, annual gross revenues shall mean gross revenues attributable to a twelve (12) month accounting period, or portion thereof. This definition of

gross revenues shall be the basis for computing the fee imposed pursuant to various sections of this article.

Loss of Franchise Fees: Due to competition between land based cable video and satellite-based video, some municipalities are experiencing a decrease in fees as residents and businesses switch from BUSINESS to satellite based video services.

Use of Rights of Way: BUSINESS has buried cable along rights of way throughout the municipality and must perform certain duties, including collection of a fee in accordance with their franchise agreement with BUSINESS.

Satellite Equipment: Satellite based video operators do not make use of public rights of way, thus they are not subject to paying a franchise fee.

QUESTIONS

Question 1: Can Home Rule municipalities impose a 'use tax' upon satellite-based services as defined in item 2 above?

Question 2: Can Home Rule municipalities impose a 'sales tax' on gross revenue as defined in 2 above on satellite based services?

Question 3: Can Non Home Rule municipalities impose a 'sales tax' on gross revenue as defined in 2 above on satellite based services?

Question 4: Are there any restrictions on the percentage charged for a gross revenue tax or on the fee charged for a use tax imposed upon satellite based services.

DEPARTMENT'S RESPONSE:

Except as otherwise provided in Article 8, Division 11, of the Illinois Municipal Code, no home rule municipality has the authority to impose, pursuant to its home rule authority, a retailer's occupation tax, service occupation tax, use tax, sales tax or other tax on the use, sale or purchase of tangible personal property based on the gross receipts from such sales or the selling or purchase price of said tangible personal property. 65 ILCS 5/8-11-6a. This Section also identifies certain types of municipal taxes that are not preempted, notwithstanding the prohibition on occupation, sales or use taxes on tangible personal property. Since the Department does not administer local taxes, however, it cannot opine on whether a municipal tax imposed on satellite-based video services and collected directly by that municipality is lawful. I direct your attention to Section 602 of the federal Telecommunications Act of 1996. ("A provider of direct-to-home satellite service shall be exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.")

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. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See 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 86 Ill. Adm. Code 150.101.

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. Television programming or other services in which no tangible personal property is transferred are not subject to Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax, and Service Use Tax liability. For general information regarding sales of service and Service Occupation Tax, see 86 Ill. Adm. Code 140.

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. For additional information regarding telecommunications tax liabilities, please refer to 86 Ill. Adm. Code Part 495. In addition, please refer to the Telecommunications Infrastructure Maintenance Fee Act, 35 ILCS 635/1 and the Simplified Municipal Telecommunications Tax Act, 35 ILCS 636/5-1 et seq.

Persons who provide satellite television services, including basic network channels, premium channels, pay per view movies, sporting events, etc., are generally not subject to the Telecommunications Excise Tax liability. If a company engages in the retail sale of software to access said services, Retailers' Occupation Tax liability may be incurred.

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:msk