

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 86 Ill. Adm. Code 130.101. (This is a GIL.)

August 5, 2010

Dear Xxxxx:

This letter is in response to your letter dated June 25, 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 will soon be starting operations in your state and would like to receive a determination of to what degree our services are subject to sales tax. Below is a general description of our business followed by a list of services and offerings that we may choose to provide. Please comment on the sales tax status for each offering noted and the partial extent (percentage of) it may be taxable in the case of a bundled offering that includes both taxable and exempt offerings. Please also provide any specific suggestions or instructions with respect to who to notify in your state or what forms to submit such that when our monthly tax payments are made our handling of them is on record.

Thank you for your assistance and please contact me with any questions or clarifications required.

Business Description:

XYZ by ABC operates equipment located in travel center (truck stop) parking lots. Truck drivers pull into parking spaces outfitted with our equipment. A heating, cooling and ventilation unit sits above each parking space. The unit is connected to a Service Delivery Module by means of a flexible hose. The Service Delivery Module attaches to

the truck's passenger window and is the delivery mechanism for the conditioned air as well as the power, communications and entertainment offerings.

Specific offerings:

Basic Service Package: For a single bundled hourly rate, the customer receives heat/air conditioning, the ability to watch a limited set of TV channels if they desire, the ability to plug into a powered electrical outlet, and the ability to access the Internet through a wired connection.

Wireless Internet Access: For a separate charge, customers may gain access to the Internet via our wireless network connection.

Broadband Internet Access: For a separate charge, customers may use an Ethernet connection to access the Internet through our Service Delivery Module.

Expanded TV Access: For a separate charge, customers may gain access through our Service Delivery Module to additional TV channels not provided in the Basic Service Package.

Movies on Demand: For a separate charge, customers can purchase the ability to access and view movies through our Service Delivery Module.

Electricity: For a separate charge, customers can purchase just the ability to access a powered electrical outlet through our Service Delivery Module

Window Adapter: For a separate charge, customers may purchase a plastic window adapter that enables the Service Delivery Module to attach to the customer's truck. The customer typically retains the adapter for future use of our services. The customer adapter has no other use or value.

DEPARTMENT'S RESPONSE:

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 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. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay 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 the Retailers' Occupation Tax liability incurred on those sales.

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 his activities. For your general information see of 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

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.

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. 35 ILCS 636/5-10 and 5-15. 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.

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" includes "a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet". 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.

The Electricity Excise Tax Law imposes a tax upon the privilege of using in this State electricity purchased for use or consumption and not for resale. 35 ILCS 640/2-4. Under Section 2-7 of the Law, the tax is required to be collected from users by delivering suppliers maintaining a place of business in Illinois. The provisions of Section 2-8 of the Law state that the tax "required to be collected by any delivering supplier maintaining a place of business in this State ... shall constitute a debt owed by that person to this State ..." In other words, delivering suppliers that are required to collect the tax and fail to do so become liable for that tax.

If the single charge for the Basic Service Package includes the ability to obtain electricity, the Company would generally be considered the user of the electricity and liable to its supplier for the tax on the electricity delivered to the Company and provided as part of the package. However, if the Company were to charge its customers for electricity separately, those customers would be considered the users of the electricity, and the Company would be responsible for charging and remitting the Electricity Excise Tax as a delivering supplier. See 86 Ill. Adm. Code 511.200.

The Company would be liable for Retailers' Occupation Tax on the retail sale of any tangible personal property, including the window adapters, and its customers would be liable for Use Tax on such purchases.

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:mks