

For purposes of the Telecommunications Excise Tax, “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. See 35 ILCS 630/5-7 and 86 Ill. Adm. Code 495.100(d). (This is a PLR.)

May 18, 2011

Dear Xxxxx:

This letter is in response to your letter dated February 10, 2011 in which you requested a Private Letter Ruling on behalf of COMPANY. 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.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

As counsel for and on behalf of COMPANY, we request a Private Letter Ruling, pursuant to 2 Ill. Admin. Code §1200.110, from the Illinois Department of Revenue (‘Department’), confirming that the provision of Internet-enabled conference calling services where the service provider does not provide any underlying transmission service is exempt from the Illinois Telecommunications Excise Tax. COMPANY provides below a Statement of Facts, a Statement of Authorities, and a Statement of Information Required Under 2 Ill. Admin. Code §1200.110(b).

**I. Statement of Facts**

COMPANY is a STATE limited liability company. The company is registered with the Department. The company registered with the Department because it has hired an employee that will work from their home in Illinois, thus potentially establishing a nexus with the state for tax purposes.

COMPANY provides conferencing services. Specifically, COMPANY provides web-based and audio conferencing services using Voice over Internet Protocol ('VoIP') and open source software. COMPANY obtains VoIP and Internet access services from third party providers to connect its conference bridge software to the public switched telephone network ('PSTN') and the Internet. COMPANY has not provided a resale exemption certificate to the third party providers. The Company offers its customers the option of connecting to the bridge via a ten-digit telephone number, which is not a toll-free number, or via the Internet. During any particular conference call, participants could be connected via the telephone number or the Internet, and individual participants can change their method of connection during a single session. COMPANY does not provide the telecommunications service or Internet access service used by its customers to access the conference bridge. Rather, the customer must obtain and pay for the services of their local exchange carrier or other access provider in order to make the call/connection. In sum, COMPANY does not provide telephone or broadband transmission services, but rather allows customers that purchase those services from other companies to access its conferencing service. COMPANY's bridge permits users to communicate with each other by transforming the protocols (PSTN and Internet) so that participants using disparate protocols can listen to and interact with each other. The service also allows for recording and playing back the meeting. Participants can be muted/unmuted from the computer screen, and can electronically 'raise their hand' online. They can submit questions via a chat window to be answered by chat, audio or video. They can upload and review documents, and create collaborative notes that other participants can see.

In sum, COMPANY's service combines voice, video, data and chat into an integrated service – acting on the form, content and protocol of the customer's information by translating it between different protocols. However, COMPANY does not transmit that information between the customer and the conference bridge. Instead, the customer uses transmission service provided by third parties such as local exchange carriers, ISPs, and others that provide telephone and Internet access services.

## **II. Statement of Authorities and Analysis**

### **A. Statutory Authority**

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications by a person in Illinois. See 35 ILCS Sections 630/3 and 630/4.

Pursuant to ILCS 630/2(c), '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. ...' (emphasis added).

This definition clarifies the type of message or information *transmission* that is taxable when it is originated or received within the State of Illinois. Because COMPANY does

not provide transport or transmission of the information or message, its conferencing services should not be subject to the Telecommunications Excise Tax.

COMPANY's service also falls outside the definition because '[t]he definition of 'telecommunications' shall 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(c).

As noted above, COMPANY provides computer processing that acts on the form, content, code or protocol of the customer's information (which is ultimately transmitted by a third party carrier to COMPANY's servers and to and from the customer). Thus, COMPANY's services are 'value added' services and not 'telecommunications' subject to the Telecommunications Excise Tax.

#### *B. Regulatory Authority*

Department Regulation 86 Ill. Adm. Code Sec. 495.100, addresses the taxability of services unrelated to the provision of telecommunications transport. That regulation states in relevant part as follows: '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). 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.' 86 Ill. Adm. Code Sec. 495.100(d) (emphasis added).<sup>i</sup>

Further, that regulation provides in part: 'A retailer may provide services to customers that are not provided in connection with originating or receiving telecommunications. If such services are not necessary for or directly related to the retailer's provision of telecommunications to customers and the charges for such services are disaggregated and separately identified from other charges, the charges need not be included in "Gross charges.' Without limitation, examples of such services not included in 'Gross charges' are directory advertising; specialized designing and/or engineering services; specialized security measures; and consulting services.' 86 Ill. Adm. Code 495.100(a).

COMPANY provides a customer with the ability to transform disparate protocols so that participants can understand and communicate with each other. Other telecommunications companies provide the customer with transport of information and data from points of origination (phone or computer) to termination (conference bridge). For these customers, conferencing services cannot be necessary or directly related to the provision of telecommunications because COMPANY is not providing the underlying transport of the information to or from its customers. The regulation provides several examples where a telecommunications company can provide non-taxable [sic] services to its customers. Each example listed (specialized designing services, specialized security services, etc.) is non-taxable [sic] because it is not provided in connection with originating or receiving a telecommunications service. These examples are 'without limitation,' meaning that other unlisted services (*i.e.*, conferencing services) can also be non-taxable [sic] as long as they are not provided 'in connection with' originating or terminating telecommunications services. Although the protocol conversion can be between telephones and computers, not just two computers, it is similar to the example of computer processing application exempted by Code Section 495.100. Thus, all of

the regulation's criteria are met, and COMPANY's provision of conferencing services without transmission should not be taxable.

### **III. Statement of Information Required Under 2 Ill. Admin. Code §1200.110(b)**

Pursuant to 2 Ill. Admin. Code §1200.110(b), COMPANY provides as follows:

*1) A complete statement of the facts and other information pertinent to the request. The request must contain a complete statement of all material facts. The material facts include the identification of all interested parties, a statement of the business reasons for the transaction, and a detailed description of the transaction. The request must contain an analysis of the relation of the material facts to the issues.*

Response: See the Statement of Facts set forth above.

*2) All contracts, licenses, agreements, instruments or other documents relevant to the request.*

Response: COMPANY is not aware of any contracts, licenses, agreements instruments or documents relevant to this request.

*3) An identification of the tax period at issue, and disclosure of whether an audit or litigation is pending with the Department.*

Response: COMPANY makes this request with respect to the tax periods beginning October 11, 2010 to the present, and on a prospective basis with respect to future tax periods. COMPANY potentially established a nexus with the State of Illinois, as described above, on October 11, 2010 after hiring an employee in the state of Illinois. COMPANY has undertaken discussions with Department staff in the Department's Excise Tax Division, but because the service is new and unique to the marketplace, no audit or litigation concerning the tax treatment of COMPANY's services is currently pending with the Department.

*4) A statement that to the best of the knowledge of both the taxpayer and the taxpayer's representative the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, or whether the taxpayer or any representatives previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.*

Response: COMPANY has not previously submitted this or any similar issue to the Department for consideration under a Private Letter Ruling or General Information Letter. COMPANY has discussed the above-stated questions with the Department's Excise Tax Division, which recommended that COMPANY seek review by the Legal Division.

In ST 02-0054-GIL 02/08/2002, *Gross Charges for Teleconferencing Services that Include the Reselling of Telephone Services are Subject to the Telecommunications Excise Tax Act*. See 86 Ill. Adm. Code Part 495 (Feb. 8, 2002) the Department addressed a similar question concerning the provision (by another entity) of teleconferencing 'bridging' services that did not also offer transmission. While the

Department did not specifically address in the letter whether taxes are due in situations when a teleconferencing service does *not* provide transmission services, we believe the title of the letter supports our conclusion that the tax does not apply to conferencing services that do not provide end users with transmission services.

5) *A statement of authorities supporting the taxpayer's views, an explanation of the grounds for that conclusion and the relevant authorities to support that conclusion.*

Response: See the Statement of Authorities set forth above.

6) *A statement of authorities contrary to the taxpayer's views. Each taxpayer is under an affirmative duty to identify any and all authorities contrary to the taxpayer's views. If the taxpayer determines that there are no authorities contrary to his or her views, or taxpayer is unable to locate such authority, the request must contain a statement to that effect.*

Response: COMPANY is unaware of any authority contrary to its views set forth in this request.

7) *An identification of any specific trade secret information taxpayer requests be deleted from the publicly disseminated version of the private letter ruling.*

Response: We ask that COMPANY's name, address, registration identification number, tax identification number, and any other identifying information (including attachments) be kept confidential and deleted from the publicly disseminated version of the private letter ruling.

8) *The signature of the taxpayer or the taxpayer's representative. A taxpayer's representative must also provide a properly executed power of attorney.*

Response: The signature of COMPANY's representative is set forth below. A Power of Attorney has been attached hereto, which evidences our authority to make this request on COMPANY's behalf.

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Should you have any questions concerning this request, or require additional facts in order to issue the requested Private Letter Ruling, please do not hesitate to contact the undersigned.

## **DEPARTMENT'S RULING:**

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).

Based on the description of the web-based and audio conferencing service in your letter, it is the Department’s position that the service is a value added service and is not subject to Telecommunications Excise Tax.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, 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,

Terry D. Charlton  
Chairman, Private Letter Ruling Committee

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<sup>i</sup>The regulation also provides: ‘Gross charges does not include 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). 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 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.’ 86 Ill. Adm. Code 495.100(c).