

“Prepaid telephone calling arrangements” are taxable under the Retailers’ Occupation Tax Act. See 35 ILCS 120/2-7. (This is a GIL.)

March 14, 2012

Dear Xxxxx:

This letter is in response to your letter dated February 10, 2012, 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 a CITY based wireline telecommunications provider. We occasionally receive inquiries from customers who have received tax exemption certificates from your office. The exemption certificates usually indicate that these organizations are eligible for tax-exempt treatment for the Retailers’ Occupation Tax Act, Use Tax Act, Service Occupation Tax Act, and Service Use Tax Act. Our usual response states that they are not exempt because these statutes apply to situations when there is a purchase of tangible personal property (for example, a refrigerator), and the tax exemption does not apply for intangible services from telecommunications companies like ABC. Please clarify the accuracy of this analysis especially given my subsequent inquiry below.

In the course of responding to a request for proposal from a unit of government...a county in Illinois, there was a section in the proposal where we are asked to stipulate that the county ‘is not subject to...state and local taxes per Ch 120 par 441.’ I believe this is the first time that we have been asked about this. The statute reads as follows:

(35 ILCS 120/2) (from Ch. 120, par. 441)

Sec. 2. Tax imposed. A tax is imposed upon persons engaged in the business of selling at retail tangible personal property, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing

produced for use in motion pictures for public commercial exhibition. Beginning January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under this Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed.

Our customers technically prepay for their telephone services as we bill their monthly recurring charges in advance, but I need clarification if this 'prepaid telephone arrangement' constitutes tangible personal property that makes them eligible for tax-exempt treatment for the state and local taxes. Additionally your Publication 104 (Nov, 2011) states that E number organizations 'qualify as tax-exempt purchasers of tangible personal property and prepaid wireless services.' (emphasis provided). Has the Department made a distinction between wireline services and wireless services for tax-exempt eligibility?

Do all of our E number customers qualify as tax-exempt purchasers for their prepaid telecom services? If these E number customers qualify for tax-exempt treatment for their state and local taxes, which of the following taxes should be tax-exempt:

- IL Telecom Relay Service and Equipment
- IL Universal Service Fund
- State Telecommunications Excise Tax
- State Telecommunications Infrastructure
- 911
- Sales Tax
- State and Local Telecom Tax
- PUC
- Simplified Telecommunications Tax
- Municipal Telecom Taxes

Please give this matter your prompt attention. Thank you for your cooperation.

DEPARTMENT'S RESPONSE:

The Telecommunications Excise Tax Act (The 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. See 35 ILCS 630/3 & 4 and 86 Ill. Adm. Code 495. The Act defines gross charges as including amounts 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 retailers. 35 ILCS 630/2(a).

The only purchasers who can purchase telecommunications tax-free are the State and Federal governments, State Universities created by statute, and between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries for their use or consumption and not for resale. 35 ILCS 630/2.

Beginning January 1, 2001, prepaid telephone calling arrangements are considered tangible personal property subject to the tax imposed under the Retailers' Occupation Tax Act, regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now

known or hereafter developed. 35 ILCS 120/2. The 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 at a rate of 6.25%. Under the Use Tax Act, a tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer. The Use Tax Act applies when tangible personal property is purchased anywhere at retail. In essence, the retailer collects the Use Tax from the customer to reimburse it for the Retailers' Occupation Tax paid by it to the State.

"Prepaid telephone calling arrangements" mean the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. "Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. 35 ILCS 120/2-27.

Prepaid telephone plans that do not meet the definition of a "prepaid telephone calling arrangement" are taxed under the Telecommunications Excise Tax. Paying in advance recurring monthly charges for telecommunications services obtained under a subscription plan does not convert telecommunications services into a prepaid telephone calling arrangement.

If a service or plan meets the definition of a "prepaid telephone calling arrangement" it is subject to the tax imposed under the Retailers' Occupation Tax Act, and the exemptions available under this Retailers' Occupation Tax Act apply.

Organizations that are recognized as non-profit under Internal Revenue Code Section 501(c)(3), are not necessarily exempt organizations pursuant to Illinois tax law. Such organizations must obtain an exemption identification number (an "E number") to qualify. See 86 Ill. Adm. Code 130.2007. Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an E number. The E number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that currently only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

All sales to an exempt entity holding an E number must be documented. See the Department's regulation at 86 Ill. Adm. Code 130.810(b).

Some of the Department's regulations addressing sales to tax exempt organizations and governmental bodies can be found at 86 Ill. Adm. Code 130.120 (Nontaxable Transactions), Section 130.2004 (Sales to Nonprofit Arts or Cultural Organizations), Section 130.2005 (Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons), Section 130.2007 (Exemption Identification Numbers) and Section 130.2080 (Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel).

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

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