

This letter discusses the sales of cellular telephones. 86 Ill. Adm. Code 130.101. (This is a GIL.)

September 1, 2012

Dear:

This letter is in response to your letter received in this office on August 21, 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](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:

Will you please issue a general information letter explaining what I am to collect sales tax on when I sell a cellular phone bundled with a service contract? This is the typical way 99% of phones are sold and in most cases the selling price does not recoup our cost of the phone.

**DEPARTMENT'S RESPONSE:**

We cannot comment on your specific transaction based on the limited amount of information provided, but we hope the following legal information is helpful.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail 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.

Retailers' Occupation Tax is measured by the sellers' gross receipts from sales of tangible personal property. If retailers sell cellular phones to their customers, the retailers incur Retailers' Occupation Tax measured by the gross receipts from the sales. At the time the retailers purchase cellular phones from their suppliers, the retailers should supply Certificates of Resale to their suppliers. Then, when the retailers sell the cellular phones, the retailers will pay Retailers' Occupation Tax based on the amount they receive from their customers. This amount represents the gross receipts received from the sale of the cellular phone. It is important that retailers be very careful when computing the amount of gross receipts from the sales of their cellular phones. "Gross receipts" means "all the consideration actually received by the seller, except traded-in tangible personal property" from all sources. See 86 Ill. Adm. Code 130.401. The retailers are required to collect a complementary Use Tax liability from their customers when the sales of the cellular phones occur. The tax should be

listed as a separate item from the selling price of the equipment and not as an administration or service charge. See 86 Ill. Adm. Code § 150.135.

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.

“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 charge its form or content. “Gross charges” also do not include charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges in the books and records of the retailer. See 35 ILCS 630/2.

You should also be aware that on and after January 1, 2001, prepaid telephone calling arrangements are considered tangible personal property subject to Retailers' Occupation Tax liability not are no longer considered telecommunications subject to the Telecommunications Excise Tax. 35 ILCS 630/3 & 4. "Prepaid telephone calling arrangements" generally means the right to exclusively purchase telephone or telecommunications services that must be paid for 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 however include an arrangement whereby a customer purchases a payment card and pursuant to which 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.

We suggest you review previous letters issued by the Department that are located on our website regarding the taxation of the sales of cellular telephones under various scenarios.

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,

Richard S. Wolters  
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