

ST 15-0001-PLR 01/09/2015 TELECOMMUNICATIONS EXCISE TAX: 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.)

January 9, 2015

Dear XXXX:

This letter is in response to your letter dated June 26, 2014, 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.

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 1, COMPANY 2 and COMPANY 3 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 1, COMPANY 2 and COMPANY 3, 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:

Our firm represents COMPANY 1 (EIN #), COMPANY 2 (EIN #) and COMPANY 3 (EIN #). Each of these companies is engaged in providing various electronic messaging services to business enterprises. These services include providing a value-added network (VAN) service for electronic data interchange (EDI), as well various email services and internet-based facsimile services.

We are requesting a Private Letter Ruling on behalf of all three companies (together, the "Petitioners") addressing whether their services would be subject to the Illinois Telecommunications Excise Tax or any other Illinois taxes for the current tax period and future periods. A single ruling is permitted under 2 Ill. Admin. Code § 1200.110, since Petitioners are part of a unitary business. Power of attorney forms authorizing our representation in this matter are attached for each company.

Neither an audit nor litigation is pending with the Illinois Department of Revenue (the "Department") involving any of the Petitioners. To the best of the knowledge of both our firm and the Petitioners, the Department has not previously ruled on the same or a similar issue for the Petitioners or any predecessors. Nor have we or the Petitioners previously filed a request for a ruling on the same or a similar issue.

I. Rulings Requested

1. Are any of the services described below taxable as "telecommunications" under the Illinois Telecommunications Excise Tax Act (35 ILCS 630/1, et seq.)?
2. Are any of the services described below subject to tax under any other provision of the Illinois Revenue Code?
3. If any of the specified services could be deemed taxable "telecommunications" services or were considered taxable under any other provision of the Illinois Revenue Code, would Illinois be nonetheless prohibited under the federal Internet Tax Freedom Act from imposing such taxes?
4. If any of the specified services are considered taxable, either as telecommunications or under another designation, how should the receipts be sourced to Illinois?
5. If any of the specified services are considered taxable, would Petitioners be entitled to purchase telecommunications services they consume tax-free as purchases for resale?

II. Statement of Facts

Petitioners are engaged in providing computer-based electronic messaging services to businesses enterprises, utilizing their own network of computer servers and the public internet. Petitioners are not regulated as providers of telecommunications services by the Federal Communications Commission. Petitioners' servers are located in STATE 1, STATE 2, STATE 3, and STATE 4. Petitioners have employees in STATE 2 and STATE 1.

Together, Petitioners offer the following services:

- Integrated Desktop Messaging (IDM)
- Electronic Data Interchange (EDI) value-added network (VAN) service
- Notifications Email
- Production Email
- Broadcast Fax

The facts relating to each of these services and the companies to which they relate are outlined individually below.

Integrated Desktop Messaging ("IDM")

This service is offered by COMPANY 1 and COMPANY 2 (for purposes of these facts, the "Companies").

The IDM service enables customers ("Customers") to send and receive traditional facsimile documents digital form, directly from (or to) their desktop computer applications, utilizing email and electronic mailboxes. The IDM service allows a business to replace its entire fax infrastructure (i.e. traditional fax machines, networking hardware and software, telecommunications lines, and maintenance contracts) with a cloud-based service that operates utilizing the business's existing computer applications and email accounts.

Through the IDM service, the Companies provide the data processing and conversion functions necessary to both: (1) accept a Customer's documents and data in email format (i.e. an email with attachments from a word processing application) and convert such data into the necessary format for delivery to a traditional paper fax machine; and (2) to receive a fax transmission from a traditional fax machine and convert that data into email format to be delivered as an email and stored in the customer's electronic mailbox. A Customer and its systems administrators are able to track messages, receive delivery confirmations, and run analytical reports. Administrators also have access to web-based "dashboard" where they can customize, set preferences for and otherwise manage the service.

The service operates as follows:

1. IDM Customers can contract for inbound service, outbound service, or both.
2. A Customer wishing to "fax" a document utilizing IDM initiates the process by sending an email to the Companies' network designating the recipient and attaching the desired files. This transmission of data from the Customer to the Companies is carried out via the Customer's own third-party telecommunications line provider. Any charges for such transmission by that provider are the responsibility of the Customer.
3. Although some Customers establish (and pay a third-party telecommunications provider for) a dedicated link to the Companies' servers such as a secure Virtual Private Network (VPN) or other method such as File Transfer Protocol (FTP), most users simply utilize their existing email client to send and receive messages utilizing the IDM service.
4. Transmissions of data onto the Companies' servers are typically made in Simple Mail Transfer Protocol (SMTP), a standard data format for messaging over the internet.
5. Once on the Companies' servers, Customers' emailed data and attachments are converted by the Companies' proprietary software into a TIFF image capable of being processed by a traditional paper fax machine. If the Customer's recipient also utilized IDM or similar service offered by a competitor, the transmission would ultimately be delivered from one electronic mailbox to another without a fax machine entirely.
6. Once processed, the converted message is delivered from the Companies' servers to the recipient via third-party telecommunications carriers. The Companies pay for such transmission services, including any taxes charged by the provider. The Companies absorb this cost and do not claim a resale exemption on the taxes charged; nor do they separately bill customers for this telecommunications expense.

7. For Customers who *receive* inbound messaging services through the IDM service, the Company assigns an “e-fax” phone number to that user’s email address. The Company obtains such numbers from a third-party telecommunications carrier, the cost of which is borne by the Company and not separately billed to customers. Customers also have the option to port/transfer their existing traditional fax number to the IDM service.
8. A fax document sent to an IDM Customer's e-fax number is delivered (via the sender's own telecommunications carrier) to the Companies' servers, where it is converted into either a TIFF or PDF format and delivered (as an email with a file attachment) to the email address associated with the e-fax number. The transmission of the email from the Companies' servers to the Customer is carried out by a third-party telecommunications carrier, the cost of which is borne by the Companies, including any taxes charged. The Companies do not claim a resale exemption from taxes on these charges; nor do the Companies separately bill Customers for this telecommunications expense.
9. An optional PDF Editor feature allows incoming faxes to be converted to PDF format capable of being edited.
10. A Customer's systems administrator has the ability to manage and set preferences for the service, including creating customized cover pages, send and receive settings and preferences for signatures. All such customizations and preferences are stored by the Company and applied to the customer's inbound and/or outbound messages.
11. The Company charges a one-time setup fee for IDM service. After that, customers are charged a monthly subscription fee, plus a usage fee based on the volume of transactions processed on the Company's network (measured by number of pages processed). The Company does not separately bill customers for its telecommunications costs.

EDI Value-Added Network (VAN) Services

This service is offered by COMPANY 3 and COMPANY 2 (for purposes of these facts, the “Companies”).

Electronic Data Interchange (EDI) is a form of business-to-business messaging allowing routine business documents such as purchase orders invoices, shipping confirmations and invoices to be exchanged electronically among trading partners and others utilizing industry-standard data formats. The structured formats allow such documents to be processed automatically by the partners’ computer systems without the need for manual intervention.

Although EDI, in its simplest form, can operate as computer-to-computer exchange over a real-time telecommunications channel, such a link is impossible for many large businesses who need to process hundreds of transactions per day with numerous trading partners. Through use of the Companies' EDI value-added network (VAN)

service, a Customer can send transactions to the VAN, have the transaction converted into the necessary format to allow processing by the recipient. This eliminates the need for the Customer to establish and manage individual interconnects with trading partners, and it ensures EDI transactions can be exchanged and processed regardless of whether the recipient's data standards or computer systems are otherwise compatible. Rather than the unstructured text contained in an ordinary email message, an EDI formatted transaction places all necessary information into an industry-standard structure so that each data field can be recognized and processed in an automated fashion.

A VAN also acts as a virtual post office, providing Customers electronic mailboxes and the capability to manage their inboxes and outboxes, as well as store, track, search and archive all of their EDI transactions.

The Companies' EDI VAN service operates as follows.

1. The VAN operates utilizing the Companies' network of computer servers, the internet and interconnects with competing value-added EDI networks.
2. A Customer wishing to send an electronic EDI transaction to a trading partner uploads the data onto one of the Companies' servers, utilizing the Customer's own telecommunications carrier or internet access provider. The Companies do not provide a communications channel for Customers to access the network. The charge for this transmission onto the Companies' servers is the responsibility of the Customer.
3. Once on its servers, the Companies' proprietary software processes, translates and converts the Customer's data based on the EDI standard necessary for the recipient to process the transaction (e.g., as an automated purchase order). EDI standards specify how data and data fields necessary to complete particular transactions are formatted.
4. Once processed, the transaction is delivered to an electronic mailbox maintained by the recipient. The email is stored until the recipient contacts the VAN to retrieve the transaction from processing.
5. Transactions processed by the VAN operate exclusively by way of email delivered (once converted in to EDI format) to electronic mailboxes. If a Customer's intended recipient is also a subscriber to the Companies' service, the converted data is placed into a mailbox on the Companies' VAN. If the recipient uses a competitor's service, the converted data is "handed off" to the competing VAN for delivery to the recipient's mailbox on the VAN.
6. Any actual transmission of Customers' uploaded data -- either between the Companies' servers or onto the internet -- is accomplished by third-party telecommunications providers. The cost of such transmission, including any taxes charged, is paid by the Companies. The Companies do not claim a resale exclusion on these taxes, nor are Customers separately billed for these cost.
7. VAN Customers are provided with an electronic mailbox, which is hosted on the

Companies' servers. Customers can log into a web-based portal to access their mailbox. The online "dashboard" allows Customers to store, archive, search and track transactions in their inbox and outbox, and queue transactions for processing.

8. The service provides detailed transaction reporting for purposes of monitoring, auditing and tracking.
9. Some Customers are capable of uploading files that are already in standard EDI data formats. These customers benefit primarily from the VAN's electronic mailbox capability, including the ability to actively manage their inboxes and outboxes and track transactions.
10. Other Customers have the ability to upload data in virtually any format (e.g. traditional email, unstructured text files or faxes) and have that data translated and converted into the necessary standard capable of being recognized and processed by the recipient as an EDI transaction.
11. The EDI VAN service supports all current EDI data standards, as well as proprietary standards, the XML standard, financial industry standards, and others, depending on which is employed by the Customer or its recipient.
12. Customers are charged a monthly usage fee based on the volume of both incoming and outgoing transactions. The charge is calculated on total kilocharacters per message. If both the sender and recipient of a transaction are Customers, both are charged for the transaction. If only the sender is a Customer, then only the sender is charged.
13. The service agreement between the Companies and Customer provides that both parties are responsible for paying their own telecommunications access and usage fees to their respective telecommunications provider pursuant to their own agreements.
14. No tangible personal property is transferred to the Customer under the service.

Production Messaging (Notifications Email/Production Email)

Production Messaging encompasses two distinct electronic mail services: Notifications Email (provided by COMPANY 1) and Production Email (provided by both COMPANY 1 and COMPANY 2). Both services enable Customers to automate the creation and delivery of high-volumes of outbound electronic messages that require customization for each recipient.

Examples of applications for Notifications Email include a utility company needing to send out a notice of a service outage or impairments to all or some of its customers or a retailer needing to send a high volume of promotional notices. The service allows the Customer to upload the content of the outgoing message via the internet (along with contact information and data relevant to each recipient), and have a customized message delivered to each intended recipient, either by email, fax, voice or text message, depending on the preferences set by the Customer. The service provides the ability to insert trackable web links into outgoing messages, add attachments and schedule the timing of the message's release. Storage functions allow Customers to

archive and retrieve transactions and to store business rules such as personalization preferences and logos, all merged and processed with the Customer's uploaded messages.

Production Email operates similarly. However, the service also allows Customers to create and store message templates which can be merged with and populated by recipient-specific data files uploaded by the Customer. Typical applications for Production Email include customer billing statements, letters of credit, and trade confirmations. The service allows customers to upload a single message common for all recipients, along with unstructured text files containing specific data necessary for each intended recipient. The service provides the necessary data parsing, merging of data fields, and form-overlay functions to create a customized message for intended recipients, often containing data relevant only to that recipient.

The Notification Email and Production Email services operate as follows:

1. The Companies' servers accept various data formats from Customers' systems, including SMTP, FTP, API, and data entered through web-based portal accessible by Customers of both services.
2. A Customer wishing to send a high-volume outbound message through either service can upload a single message common to all recipients, along with text files containing destinations and other recipient-specific data. The message is then personalized according to the business rules and other information supplied by the Customer. Data fields can be merged, logos can be added, and other customizations can be performed before the messages are delivered to individual recipients.
3. For Notifications Email, this upload typically consists of the text of the message along with text files containing the recipients' email addresses or other contact information (e.g. fax number or number for text messaging) and other information to be inserted into the message.
4. For Production Email, the Customer typically uploads a template of a message that will be common for all recipients (e.g. a billing statement), as well as text files containing recipient email addresses and data specific to each recipient on the list (i.e. billing data).
5. In both cases, Customers utilize their own third-party telecommunications or internet access provider to transmit the data onto the Companies' servers. Any costs for this transmission/connectivity are borne by the Customer.
6. Once the data is uploaded, the Companies' proprietary software processes the Customer's message, along with any accompanying text files, stored business preferences, logos and/or other customizations to create individual messages addressed to each intended recipient. Both services provide Customers with the ability to store such business rules and customizations on the Companies' servers for application to all outbound messages.

7. For Notifications Email, customization functions include the ability to designate the communications mode by which the notification for each recipient will be delivered, whether by SMS (text message), email, voice, or fax.
8. For Production Email, the customization includes populating each data field of the Customer's message template with data from other Customer-supplied files, including data specific to each recipient.
9. Both services allow the same message uploaded by the Customer to be delivered to multiple addresses or customized messages to be created and delivered to each individual recipient. With Production Email, the message is almost always personalized and unique for each recipient.
10. Both services allow for the insertion of file attachments and/or trackable web links either to other websites (Notifications Email) or to recipient-specific data not included in the message itself or an attachment (both services). The later data can be stored on the Companies' servers for retrieval by messages recipients.
11. Customers of both services receive detailed reports of attempted, successful and unsuccessful deliveries. Additionally, Customers can access other management reports allowing them to monitor usage of the service and provide a complete audit trail for all transactions.
12. Both services are billed on a per-transaction basis (i.e. per email). Customers are charged both for successful deliveries and attempted and reattempted deliveries. The Companies optionally receive additional revenue when a Customer's recipient clicks a link to a third-party website (Notification Email) or clicks a link to retrieve any stored files or data intended for them (Production Email).
13. Both the Companies and their Customers are responsible for paying their own telecommunications access and fees to their respective telecommunications providers, along with any applicable taxes. The Company does not separately bill customers for its telecommunications costs.

Broadcast Fax

Broadcast Fax is offered by COMPANY 2 and COMPANY 1 (for purposes of these facts, the "Companies").

The Broadcast Fax service automates the creation and distribution of high-volume fax-based messages. Examples of typical applications of the service include an electric utility needing to issue warnings of power outages or service interruptions, and travel companies needing to send promotional offers — all of which must be output to a large volume of recipients.

Customers are able to upload a single message containing the data specific for that communication and have that message merged with other text files (i.e. mailing lists and

stored formats) to create multiple messages personalized and delivered to multiple recipients.

The service operates as follows:

1. The Companies' servers accept various forms of data uploaded from Customers' systems, including files transferred via SMTP, FTP, and Application Programming Interface ("API").
2. Customers can access the Broadcast Fax service via a web-based portal, to which they log in using an assigned user ID and password.
3. Customers use and pay their own third-party telecommunications carrier or internet access provider to access the service and to upload data. Customers can access the service either over the internet, via a virtual private network (VPN) or other methods such as FTP or Message Queue (MQ).
4. Customers wishing to initiate a Broadcast Fax message typically upload a digital file containing the general content of the message, accompanied by other unstructured text files such as recipient fax list and/or additional content to be inserted into the fax message.
5. Customers can also set preferences and store data on the Companies' servers by using the web portal. This includes storing recipient lists, business rules and preferences and customized logos and cover pages applicable to all messages.
6. The Broadcast Fax service parses and combines the Customer's message with any stored or attached text files, applies any stored business rules or preferences and creates a personalized fax message for each intended recipient. The merged and processed data is then converted into "TIFF" format for delivery to recipients either via internet/digital connectivity or via third-party telephony lines.
7. Charges for third-party telecommunications services utilized to deliver processed fax messages off of the Companies' servers are borne by the Companies, including any taxes charged. The Companies do not claim a resale exclusion for such taxes. Nor is the charge for such transmission services separately billed to the Companies' Customers.
8. The Broadcast Fax service provides customers with detailed delivery and attempted delivery reports for all recipients as well as management reports allowing Customers to monitor the service and provide a complete audit trail for all transactions.
9. Broadcast Fax Customers are charged a single, per-page fee for processing a transaction; the cost per-page varies based on the global location of the recipients. The Customer is not separately billed for transmission of processed messages.

III. Analysis

A. Illinois Statutory Framework

Illinois imposes a tax on "the act or privilege of originating in this State or receiving in this State interstate telecommunications."¹ The tax is imposed on the gross charge for telecommunications "purchased at retail from a retailer."² A "sale at retail" is defined as "the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration."

The term "telecommunications" is broadly defined to include,

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 message or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser microwave, radio satellite or similar activities.

The statutory definition makes it clear, however, that "value-added" services whose primary purpose is something "other than transmission" are not subject to tax. Specifically, 35 ILCS § 630/2(c), provides that:

The 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.

The excise tax regulations also specify that "gross charges" for telecommunications 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."³ The regulations elaborate further on what constitutes a "value-added service" as opposed taxable "telecommunications":

For example, the charges for computer data, protocol conversions that permit computers to exchange data, no matter which languages or protocols a computer's output may be in, and packet-switching, which groups data into packets for efficiency of transmission, would be exempt.⁴

B. Applicability to Petitioners' Services

These types of value-added functions —performed for purposes other than transmission —are precisely what Petitioners' customers pay for. All of these services are above and beyond the capability of standard local exchange carriers and other basic transmission

¹ 35 ILCS § 630/4.

² *Id.*

³ 86 Ill. Adm. Code § 492.100(c).

⁴ 86 Ill. Adm. Code § 492.100(d).

services. Moreover, the actual *transmission* of data, either onto or off of Petitioners' servers, is carried out exclusively by third-party telecommunications carriers whom Petitioners and their Customers must each pay for use of their transmission capabilities. These third-party providers possess the necessary switching and routing infrastructure to get Customers' data onto and off of Petitioners' servers. Petitioners do not own any such infrastructure.

1. IDM Service

Customers utilize Petitioners' IDM service to replace their traditional fax infrastructure (fax machines, telephone lines, real-time connections, maintenance, and routing equipment and software) with an entirely email-based solution allowing them to send, receive, store and track fax messages as emails with file attachments. Customers using the outbound service can simply send an email to Petitioners with any number of desired files (in virtually any file format). Petitioners' proprietary software converts the email and all files into a single TIFF image capable of being processed by a fax machine. Customers can also create, store and customize cover pages which Petitioner incorporates into the outgoing message.

Conversely, Customers using the inbound service maintain an "efax" number provided by Petitioners that allows all incoming faxes to be received first by Petitioners, converted into emails with file attachments, and placed in the Customer's electronic mailbox. This allows the Customer to retrieve and open the file from any computer whenever convenient. An optional service converts the fax image into a PDF document that Customers can instantly edit and search within.

Ultimately Customers do not pay Petitioners to transmit for the computer applications that act on the form of their data (i.e. from electronic mail to standard paper fax), as well as the content (i.e. combining stored and/or customized cover pages with Customer files to create a single fax transmission), and the protocol or code (i.e. converting an email sent via SMTP protocol to the analog signal required for a fax machine). All of these services represent value-added services rendered for purposes other than mere transmission, which are excluded from the definition of telecommunications under 35 ILCS § 630/2(d).

2. EDI VAN Service

Customers utilize Petitioners' EDI VAN service for two primary purposes: (1) to allow them to exchange business documents electronically with trading partners in standardized formats, regardless of the compatibility of their computer processing systems; and (2) to serve as a "virtual post-office", allowing EDI transactions to be received, stored and managed through the use of email and electronic mailboxes rather than real-time telecommunications connections.

Petitioners' software allows customers to send unformatted transaction-related data in virtually any format and have the data placed into the necessary standard EDI format to be processed by the Customer's trading partner. It also provides Customers with a

web-based dashboard from which they can search, sort, store, and process their incoming and outgoing EDI transactions.

Thus Petitioners' EDI service accomplishes precisely what the regulations provide as an example of a value-added service, namely "protocol conversions that permit computers to exchange data, no matter which languages or protocols a computer's out-put may be in."⁵ The electronic mailbox and web dashboard involve computer applications acting on Customers' data for purposes other than transmission. Therefore, under the statutory definition and the regulations, the EDI VAN service cannot be considered taxable "telecommunications."

3. Broadcast Fax

Broadcast Fax service allows a customer's single uploaded message to be merged with a stored or uploaded recipient list and other Customer supplied files into hundreds of individual faxes, and allows customers to add and store logos, cover pages, business rules and other customizations to be applied to all transactions. Without the service, the Customer would be required to create, address and send each message individually. Utilizing computer applications to merge data files, logos and business rules with the customer's uploaded message, the Broadcast Fax service acts on both the format and content of the message for purposes other than transmission. Thus, it represents a value-added service under 35 ILCS § 630/2(c) and not taxable "telecommunications."

4. Production Messaging

Petitioners' Production Messaging services (Notifications Email and Production Email) both allow businesses the ability to send large-volumes of electronic messages -- that would otherwise require customization for different recipients -- without the need to manually create or send each message. The Customer in each service has the ability to upload a single data message to Petitioners' [sic] and have hundreds of individual messages created and delivered to individual recipients, in many cases containing data specific only to that recipient. Petitioner achieves this by using proprietary software to merge and populate the Customer's message with other data, including unstructured text files and recipient lists to create and address any number of individual messages.

Notifications Email similarly allows Customers the ability to upload a single message onto the Company's servers and have that message delivered to a large volume of individual recipients -- not limited to delivery as an email, but as a fax, also as a voice message or mobile text message as designated by Customer for each recipient. Such instructions can be uploaded along with the original message or stored on the Company's servers along with other business rules and customizations applicable to all messages.

Production Email also offers Customers the ability to upload a single message template and have the message not only delivered to a large volume of individual recipients, but also populated with the necessary data specific to each recipient. The Customer sends

⁵ 86 Ill. Admin. Code § 492.100(d).

the template and the necessary data files to the Petitioners' servers, and the Petitioners' software processes and merges this data (along with any stored business rules or instructions) to create large volumes of individual emails, each containing recipient-specific data not included in the messages received by other recipients.

Thus, the primary function of the Petitioners' various Production Messaging services is not the mere transmission of a message to a recipient -- a function that could be carried out by the Customer's basic telecommunications carrier -- but, rather, the ability to automate the creation and delivery of large volumes of emails or fax messages merely by supplying all necessary data to the Petitioners in a single upload. To carry out this function, the Petitioners utilize computer processing applications to act on the form, content, code and protocol of the uploaded data. The purpose of this processing is not to transmit data, but to process the customer's data prior to transmission itself -- which is carried out not by the Petitioners, but by third-party telecommunications carriers paid for by Petitioners. Because of this, the Petitioners' Production Messaging services represent "value-added" services that are excluded from the definition of "telecommunications" under 35 ILS [sic] § 630/2(d).

5. Conclusion

In sum, if a Customer simply wished to transmit a single message to a single recipient in its current form, format, code or protocol, it would have no need to pay Petitioners, since the transmission could be carried out entirely by the Customer's own telecommunications carrier for a single fee. Rather, Customers pay *two* fees: one fee to their own telecommunications or internet access provider for transmission to Petitioners' service, and a second fee to Petitioners to perform the necessary data processing and conversion services prior to delivery of the message by third-party telecommunications carriers. The fee Customers pay to their telecommunications carrier to transmit their data onto the Petitioners' servers for processing represents a fee for taxable "telecommunications." Likewise, the fee the Petitioners must pay third-party carriers to transmit Customer's data to the recipient(s), once processed, represents a fee for taxable "telecommunications." But the fee Customers pay to the Petitioners for data processing beyond the capabilities of their standard telecommunications carrier is solely for a value-added service specifically excluded from the definition of "telecommunications."

C. **Authorities Supporting Petitioners' Position**

Numerous rulings by the Illinois Department of Revenue have confirmed that services primarily involving data processing constitute value-added services and not taxable telecommunications, even where transmission of the processed data to a recipient is an element of the service. For example in ST 89-0709-PLR (Nov. 28, 1989), the Department found that a company specializing in an early form of email was providing the type of value-added service and not "telecommunications." The service allowed a subscriber to connect with the provider via a standard telephone line and computer modem and upload data onto the provider's computer, where it would be stored in an electronic mailbox. Another subscriber could then access the mailbox and retrieve the data. The ruling concluded that:

the computer-to-computer data processing services, which you have characterized as electronic mail, do not fall within the definition of telecommunications. The service provided by your client is a value-added service in which computer processing applications are used to act on the form, content, code and protocol of information for purposes other than transmission.

In this ruling, the value-added component of the service provider's service was as simple as providing the storage capacity to accept data from the customer and store it until retrieved by the recipient. Yet this was sufficient to conclude that the primary purpose of the service was something "other than transmission" under 35 ILS § 630/2(c).

More recently, in Private Letter Ruling, No. ST 11-0007-PLR (May 18, 2011), the Department held that a "bridging" service allowing numerous parties to connect and communicate in real-time audio conferences constituted a value-added computer service rather than taxable telecommunications. The Department found that conference participants utilized their own telecommunication carriers and internet access providers to access the service (either over the internet using VOIP or by dialing a telephone call-in number); the service provider merely provided the necessary "bridge" to allow participants to conference regardless of their access methods.

Numerous private letter rulings have also confirmed that where a provider of a value-added data service pays third-party transmissions carriers to receive or transmit data without separately billing its customers for such charges, it acts as a *consumer* of such services, not a retailer. For example, in Private Letter Ruling No. ST-88-0220-PLR (March 22, 1988), a "computer service bureau" that received and compiled supply-chain information from various originators (e.g. purchase orders and locations of railroad cars) and delivered it, reformatted, to customers would not be providing a telecommunications service even though processed data was ultimately transmitted to recipients after processing. This is because the provider did not actually transmit the data itself; it paid third-party telecommunications carriers to do so, plus all applicable taxes. According to the Department,

If [the company] does the transmitting, the portion of its bill to its customer that is for the transmission fee is subject to the Telecommunications Excise Tax. However, if [the company] does not do transmitting and pays the tax to the transmitter, then the fee charged for the added service is not subject to the tax.

Conversely, in Private Letter Ruling No. ST-00-0028-PLR (Nov. 6, 2000), the Department found that a company providing a non-automated answering service with live operators was providing a generally nontaxable "value-added" service. However, as part of that service, call notifications could be delivered to customers' pagers. The Department noted that because the company actually owned the network infrastructure for transmitted paging services, "the taxpayer generates its own paging transmission services, rather than paying a third party provider for transmissions." Thus, the Department ruled that the paging services were subject to tax regardless of the fact that the company did not charge customer's [sic] separately for paging.

These Illinois authorities illustrate that a service like Petitioners', whose primary function is value-added computer data processing services that act on the format, code or protocol for purposes other than mere transmission will not be considered taxable "telecommunications" for purposes of the Telecommunications Excise Tax. Moreover, even if transmission constitutes one element of the service, the provider will not be considered to be a "retailer" of telecommunications if it purchases and pays taxes on (i.e. consumes) transmission services provided by third parties and does not separately bill customers for such services.

D. Potentially Contrary Authorities

Of course, if the primary purpose of a service is the transmission of data from one point to another, an incidental element of data conversion or processing will not render the service a "value-added" service. This is true for voice-over-internet protocol ("VOIP") services which merely allow telephone users to connect in real-time over the internet rather than over a traditional telephone line.⁶

Similarly, in Private Letter Ruling No. 97-0010-PLR (March 17, 1997), the Department found that a service whose primary function was to transmit radio commercials from recording studios and radio stations was providing a taxable telecommunications service. The taxpayer provided studios with computer terminals that could accept recorded commercials to be transmitted, and provided radio stations with terminals that could accept, store and play-back the commercials. Commercials were transmitted over lines provided by third-party communications carriers -- first to the taxpayer's central facility, where it was checked for errors, then by the taxpayer to the radio station. The taxpayer charged the sender a fee based on the number of deliveries and the "delivery time" that was achieved. The Department found that the taxpayer was indeed a retailer of "telecommunications." The mere fact that commercials transmitted in analog format could be "compressed" for more efficient delivery did not render the service a "value-added" service, according to the Department.

Petitioners' services are easily distinguished. Customers do not pay Petitioners merely to exchange unaltered data content between equipment supplied by Petitioners. Rather, they pay Petitioners specifically to perform computer processing tasks beyond the capabilities of standard transmission lines. The sole purpose of this value-added processing is to change the form, format, code or content of what was sent -- whether that involves converting an email from a computer software application to a standard paper fax with cover page; merging a single message template with other files to create emails personalized and addressed to hundred of recipients; or converting an unstructured email into an EDI-standard business document capable of processing by the recipient.

E. Preemption under the Internet Tax Freedom Act

⁶ See *Illinois Dep't of Revenue v. ABC Business*, Administrative Law Judge Determination, TC 12-01, Feb. 12, 2012.

Even if Petitioners' services could be somehow deemed "telecommunications" under Illinois' statutory framework, the Federal Internet Tax Freedom Act (ITFA) would prevent their taxation. ITFA has preempted state taxation of "internet access" services since its original enactment in 1998.⁷ The original definition of "internet access" applied only to services that actually provided a connection to the internet (i.e. "a service that enables users to connect to the Internet to access content, information or other services offered over the internet.")⁸ In other words, the prior definition applied only to internet service providers ("ISP").

But that changed in 2007. In 2007, Congress significantly expanded the scope of what was intended to be covered by the moratorium. First, the definition of "internet access" was expanded to include services deemed "incidental to" providing an internet connection, including a "home page, electronic mail and instant messaging (including voice- and video- capable electronic mail and instant messaging), video clips, and personal electronic storage capacity."⁹ More importantly, the 2007 act also provided that these types of "incidental" services were exempt from state taxation whether provided in connection or not. Under the amended ITFA, "internet access" now includes:

A homepage, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal storage capacity, that are provided independently or not packaged with internet access.¹⁰

The language confirms Congress's intent to include these services within the moratorium, whether or not they were provided by an ISP or even in connection with the purchase of internet access.

Although Petitioners are not ISPs, virtually all of Petitioners' services function by way of email and electronic mailboxes. This is true with respect to the IDM service which replaces traditional fax infrastructure with an entirely email-based platform for sending and receiving fax messages. This is also true with respect to the EDI VAN service which allows the exchange of transaction-related documents via specially formatted email and electronic mailboxes. Finally, Petitioners' Notifications Email and Production Email services represent an advanced form of electronic mail for Customers needing to process high-volumes of outgoing email.

Since electronic mail service is precluded from taxation under ITFA, whether provided in connection with internet access or not, Illinois would be precluded from imposing a tax on Petitioners' services, even if the Telecommunications Excise Tax or other Illinois provisions permitted such taxation.

IV. Conclusion

⁷ See Internet Tax Freedom Act, Pub. L. No. 105-277 (1998). Codified at 47 U.S.C. § 151.

⁸ Pub. L. No. 105-277 former § 1104(5).

⁹ Pub. L. No. 105-277, as amended by Pub. L. 110-108 (2007), § 1105(5)(E) (emphasis added).

¹⁰*Id.*

Petitioners provide "value-added services" as defined in 35 ILCS § 630/2(c) and 86 Ill. Admin. Code § 495.100, using computer applications to act on the form, content, code and protocol of the information for purposes other than transmission. Additionally, Petitioners' services also involve storage of data or information for subsequent retrieval and data processing intended to change the form or content of Customers' data. As such, the services cannot be taxed as "telecommunications" services under the Telecommunications Excise Tax Act. If the Department were to find that the services did constitute taxable "telecommunications", ITFA would nonetheless preclude taxation, because the services represent "email services" covered by the federal legislation.

Please contact me. If there are any questions or if additional information is needed.

DEPARTMENT'S RESPONSE:

The 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. 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.

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 identified 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).

The Department has determined that, based on the description of the services provided in your letter, it can issue a ruling on the Integrated Desktop Messaging Service, the EDI Value-Added Network Services, the Production Messaging Services and the Broadcast Fax Service. It is the Department’s position that these services, as provided by COMPANY 1, COMPANY 2 and COMPANY 3, are value added services, and the charges made by them to their customers are not subject to Telecommunications Excise Tax. The Department has insufficient information to make a ruling and, therefore, makes no ruling herein, on the taxability of additional click-through revenue received by Petitioners when a Customer’s recipient clicks a link to a third-party website (Notification Email) or clicks a link to retrieve any stored files or data intended for them (Production Email).

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 further 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 or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Chairman, Private Letter Ruling Committee

RSW:ikm