

ST 15-0003-PLR 01/12/2015 TELECOMMUNICATIONS EXCISE TAX

This letter discusses a statutory exemption from the Telecommunications Excise Tax. See 35 ILCS 630/2. (This is a PLR.)

January 12, 2015

Dear Xxxx:

This letter is in response to your letter dated October 13, 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, the [DIVISION] of the COMPANY 2 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, the DIVISION of the COMPANY 2 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:

On behalf of COMPANY 1, the DIVISION of the COMPANY 2, I am inquiring whether COMPANY 1 is exempt from the Illinois Telecommunications Excise Tax Act (35 ILCS 630/1 *et seq.*) and the Telecommunications Infrastructure Maintenance Fee Act (35 ILCS 635/1 *et seq.*).

At this time, neither an audit nor litigation is pending with the Department of Revenue. COMPANY 1 believes that the Department of Revenue has previously ruled on the instant or similar issue as it relates to COMPANY’1s sister agencies, the AGENCY 1 and AGENCY 2 (ST-0016) (PLR).

COMPANY 1, a unit of local government, body politic, political subdivision and municipal corporation, is a service board of the COMPANY 2 and was created under the [Act,] [STATUTE] *et seq.* to provide suburban mass transit bus and ADA services. Although neither the Illinois Telecommunications Excise Tax Act nor the Telecommunications Infrastructure Maintenance Fee Act exempts COMPANY 1 from its application, [STATUTE] of the [ACT] states: “Exemption from Taxation. The

Authority and the **Service Boards shall be exempt from all State and unit of local government taxes and registration and license fees** other than as required for motor vehicle registration in accordance with the "Illinois Vehicle Code", as now or hereafter amended (emphasis added). All property of the Authority and Service Boards is declared to be public property devoted to an essential public and governmental function and purpose and shall be exempt from all taxes and special assessments of the State, and subdivision thereof, or any unit of local government."

In addition to the plain language of Section XXX of the Act, COMPANY 1 is purchasing telecommunications for its own use in its operations; it is not acting as a retailer of telecommunications.

COMPANY 1 believes that Section XXX of the Act exempts COMPANY 1 from taxes and fees such as the Illinois Telecommunications Excise Tax and the Telecommunications Infrastructure Maintenance Fee, however, COMPANY 1 is receiving invoices from companies charging COMPANY 1 with this excise tax (see invoice attached). Accordingly, COMPANY 1 is now requesting a determination as to whether it is exempt from the Telecommunications Excise Tax and the Telecommunications Infrastructure Maintenance Fee. To the best of our knowledge, the Department has not previously ruled on the same or a similar issue with regard to COMPANY 1 nor has COMPANY 1 or its representative previously submitted the same or similar issue to the Department but withdrew it before a letter ruling was issued.

Based upon the foregoing, COMPANY 1 respectfully requests a Private Letter Ruling stating whether COMPANY 1 is exempt from the Illinois Telecommunications Excise Tax and the Telecommunications Infrastructure Maintenance Fee.

Please contact me at [XXX-XXX-XXXX] if you require any additional information.

DEPARTMENT'S RESPONSE:

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. 35 ILCS 630/3 and 630/4. "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration to persons other than the Federal and State governments, and State universities created by statute and other than 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.

The Telecommunications Infrastructure Maintenance Fee Act imposes a State infrastructure maintenance fee upon telecommunications retailers equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State. 35 ILCS 635/15(b). A telecommunications retailer shall charge each customer an additional charge equal to the State infrastructure maintenance fee attributable to that customer's service address. Such additional charge shall be shown separately on the bill to each customer. 35 ILCS 635/25(a).

COMPANY 1, DIVISION of the COMPANY 2, is a Service Board under the Act. See [STATUTE]. Section XXX of the Act states:

“The Authority and the Service Boards shall be exempt from all State and unit of local government taxes and registration and license fees other than as required for motor vehicle registration in accordance with the "Illinois Vehicle Code", as now or hereafter amended. All property of the Authority and the Service Boards is declared to be public property devoted to an essential public and governmental function and purpose and shall be exempt from all taxes and special assessments of the State, any subdivision thereof, or any unit of local government.”

Accordingly, it is the Department’s position that by virtue of Section XXX of the Act, COMPANY 1 is exempt from the taxes and fees imposed by the Telecommunications Excise Tax Act, 35 ILCS 630/1 et seq. and the Telecommunications Infrastructure Maintenance Fee Act, 35 ILCs 635/1 et seq.

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:CB:lkm