

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois. See 35 ILCS 630/1 *et seq.*

July 29, 2016

RE: Advice Regarding Urgent Response Medical Service

Dear Xxxxx:

This letter is in response to your letter dated April 28, 2016, 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:

Pursuant to 2 ILL. ADMIN. CODE 1200.120, this letter requests a General Information Letter from the Illinois Department of Revenue (the “Department”). This letter is on behalf of a provider (the “Company”) of urgent response medical monitoring services (or “urgent response medical service[s]”) and mobile communications and requests confirmation of the manner in which it and other similar service providers are taxed under the (1) Telecommunications Excise Tax Act and (2) Simplified Municipal Telecommunications Tax Act. For purposes of the Facts and Analysis provided below, the capitalized terms are defined in Appendix A.

FACTS

The Company offers easy-to-use cell phones, accessories, and services that target the senior citizen market. Its product offerings include an urgent response medical device (“URMD”) and two phones (the “Phones”). The URMDs are purchased up front, with monitoring service plans billed prospectively before the beginning of the billing cycle. The mobile phones are purchased up front and are billed separately for minutes, text, data usage, and add-on services provided by the Company as described below. The

minutes, data, and text messaging are billed at the end of the billing cycle. The add-on services are billed at the beginning.

URGENT RESPONSE MEDICAL DEVICE

The urgent response medical service is provided via the URMD. The device is equipped with a push button, microphone, and speakerphone. It does not have access to the digits 9-1-1. When the button is pressed or the device detects an owner's fall, the owner is connected to the Company's call center. The owner of the device and the call center operator may then engage in a two-way conversation via the device itself. The call center may then direct the communications to emergency responders local to the owner or a service offered by the Company such as the urgent care line. If the button is pressed and held, the owner is connected directly to local 9-1-1 operators.

The service comes with three basic plans:

- Plan 1 includes access to the Company's call center, which can then direct help to the device owner.
- Plan 2 includes Plan 1 service. Additionally, it includes (1) access to an urgent care line where the owner may speak to a doctor or nurse at any time and (2) updates a phone application which shows an authorized user if the owner of the URMD has used the emergency service and the status of the device, such as location and power level.
- Plan 3 includes Plan 2 service. Additionally, it includes (1) a device replacement guarantee if the phone is lost, stolen, or broken, and (2) fall detection. If the URMD detects the owner has fallen, it will connect to the call center, which will then check the status of the URMD owner.

The service is completely mobile and connects to the call center via the same Network provider as the Phones. The Company then incorporates this access into the URMD. After customers purchase the URMD, the Company sells the service for one fixed price, which includes access to the Network Provider via the device and the Company's own services. It is also equipped with GPS technology to find the owner in an emergency. The device cannot be programmed to connect with any person other than the Company's call center and local 9-1-1 operators. Call center are located in STATE 1 and STATE 2

MOBILE PHONE SERVICES

These are standard Cell phone services offering mobile communications across a nationwide cellular network (the "Network Provider"). Additionally, one of the Phones providing the service is a smartphone and offers mobile Internet access across WiFi or the Network Provider. Access through both Phones may be purchased from the Company a la carte for monthly minutes, text messaging, and data usage. The Company, in turn, purchases these services for the Phones from the Network Provider. The Telecommunications services provided by the Company, such as the minutes, text messaging, and data usage, are charged based on usage at the end of the billing cycle

after calls are made or received or the data is consumed. Add-on services provided by the Company, such as direct connection to the Company call center, are billed in advance. The Company separately states its charges for minutes, text messaging, data, and add-on services provided by the Company.

These Phones come equipped with a button that connects the owner of the device directly with the Company's call center. This service provided by the Company allows the Phone owner to be directed to one of the services offered by the Company, including an urgent care line and access to other health and wellness services.

SUMMARY CONCLUSIONS

Based on the foregoing facts and Illinois law, the Company, and other similar product and service providers, are taxable as follows:

- The Company, and all other similar products and service providers, are providing a nontaxable urgent response medical service in connection with the URMDs. All Telecommunications services are consumed by the company and any Telecommunications Taxes imposed in Illinois are paid by the Company when it purchases Telecommunications services from the Network Provider.
- The Phones are mobile communications devices subject to the Telecommunications Excise Tax ("TET") and Simplified Municipal Telecommunications Tax ("SMTT") (collectively, the "Telecom taxes") on the gross billings of usage minutes charged and text messages charged but not on data charges or add-on-services.
- All Telecom Taxes listed are the full extent of taxes on wireless Telecommunications services that may be charged to or passed along to consumers for resellers of wireless communications.

LAW

FEDERAL LAW

The federal Mobile Telecommunications Sourcing Act ("MTSA") preempts all state law for mobile telecommunications services sourcing. The law applies to all taxes, charges, or fees, whether charged as a flat fee per customer or based on usage, and applies if the charge is on the vendor or customer of the telecommunications service.¹ Under the MTSA, Mobile Telecommunications Services provided to a Customer in a Taxing Jurisdiction are sourced to that Taxing Jurisdiction if: (1) the Mobile Telecommunications Service was billed by the Customer's Home Service Provider, and (2) the Home Service Provider covers the Customer's Place of Primary Use. This is true regardless of where the Mobile Telecommunications Service originated, passed through, or terminated.² Generally, this will mean the source of the Mobile Telecommunications Service will be the Customer's home address and the authority to tax the Customer will be with the district, municipality, county, and/or state of the home address of the Customer.

¹ 4 U.S.C. § 116.

² *Id.* § 117.

Per the MTSA, charges for taxable and nontaxable services may be separately stated on bills or invoices. If charges for mobile telecommunications services are aggregated with other taxable services, the charges for nontaxable Mobile Telecommunications Services may be subject to tax.

The federal Internet Tax Freedom Act, made permanent in 2015, bans taxation of charges for Internet access. Internet access includes services or features (such as email) related to the access.³

ILLINOIS LAW

Services

Services are not subject to sales taxes in Illinois unless a service is specifically enumerated.⁴ Urgent response medical services are not an enumerated service subject to tax in Illinois.

Telecommunications Excise Tax

The TET is imposed on all persons originating or receiving Telecommunications in the state.⁵ The rate for intrastate Telecommunications is 7% of the Gross Charge for the Telecommunications Purchased at Retail from a Retailer by the purchaser.⁶ Retailers collect the TET by applying the rate to the Gross Charge.⁷ A Gross Charge does not include nontaxable services or Telecommunications if “(1) the charges are aggregated with other charges, (2) the charges are not separately stated, and (3) the Retailer can reasonably identify the nontaxable charges on the retailer’s books and records kept in the regular course of business.”⁸

A person originating or receiving Telecommunications may claim to be a reseller of the Telecommunications. As a reseller, the person would not be liable for the TET on the purchase of the Telecommunications if they have obtained a resale number from the Department.⁹

In a previously issued General Information letter, the Department determined a vehicle tracking and monitoring service offering “Telematics” was not subject to the Telecom Taxes.¹⁰ In it the vehicle tracking service had the ability to connect to a call center to receive services such as emergency services and roadside assistance, as well as detect crashes. This service was triggered by either a vehicle detecting a crash or the vehicle owner manually pushing a button for assistance. Further, the vehicle owner was not able to make outbound calls or receive inbound calls. The Department determined the taxpayer Telematics company was the ultimate consumer of the

³ 47 U.S.C. § 151.

⁴ ILL. ADMIN. CODE 130.120(d)

⁵ 35 ILCS § 630/3./4.

⁶ *Id.* § 630/3.

⁷ *Id.* § 630/5.

⁸ *Id.* § 630/2(a).

⁹ *Id.* § 630/8.

¹⁰ Illinois Dept. of Rev. General Information Letter ST 12-0041-GIL (07/27/2012).

Telecommunications service used and paid tax on the consumption of the Communications Services.

Simplified Municipal Telecommunications Tax

The SMTT is imposed on all persons originating or receiving Telecommunication in the municipality.¹¹ The rate for intrastate Telecommunications is no greater than 6% for municipalities with populations of less than 500,000 and at a rate of no greater than 7% for municipalities with populations of 500,000 or more.¹² This rate is imposed on the Gross Charges for the Telecommunication Purchased at Retail from a Retailer by the purchaser.¹³ Retailers collect the SMTT by applying the rate to the Gross Charge.¹⁴ A Gross Charge does not include nontaxable services or Telecommunications if “(1) the charges are aggregated with other charges, (2) the charges are not separately stated, and (3) the Retailer can reasonably identify the nontaxable charges on the retailer’s books and records kept in the regular course of business.”¹⁵ A person originating or receiving Telecommunications may claim to be a reseller of the Telecommunications. As a reseller, the person would not be liable for the TET on the purchase of the Telecommunications if they have obtained a resale number from the Department, or, for municipalities with a population of 500,000 or more, from the municipalities themselves.¹⁶

ANALYSIS

The URMD

The URMD is an emergency response unit, and the Company provides urgent response medical services. Its main function is to allow its owner to receive medical attention when needed. The device cannot be programmed or manipulated to connect to any number other than the Company call center or local 911. The service provided by the Company is to assist owners of the devices to get the help they need in an emergency.

In a previously issued General Information Letter (“GIL”), the Illinois Department of Revenue determined a “Telematics” vehicle tracking and monitoring service was not subject to the Telecom Taxes.¹⁷ In the GIL, the vehicle tracking service had the ability to connect to a call center to receive services such as emergency services and roadside assistance, as well as detect crashes. The Department determined a service that (1) provided only voice and data communications between a customer device and a call center and (2) did not permit customers to make call to or receive calls from any location other than the call center was not subject to the TET. Further, the Department concluded the taxpayer service provider was the ultimate consumer of the Telecommunications services.¹⁸ The taxpayer paid tax on the consumption of tangible

¹¹ *Id.* § 636/5-10.

¹² *Id.* § 636/5-15.

¹³ *Id.* § 636/5-7.

¹⁴ *Id.* § 636/5-20.

¹⁵ *Id.* § 636/5-7.

¹⁶ *Id.* § 636/5-45.

¹⁷ Illinois Dept. of Rev. General Information Letter ST 12-0041-GIL (07/27/2012).

¹⁸ *Id.*

personal property and Telecommunications services associated with providing the service to customers.

Like the Telematic service in *General Information Letter 12-0041*, the URMD cannot be programmed to connect to any number other than the company call center and local 9-1-1. Therefore, the Company is the ultimate consumer of the Telecommunications service it purchases from the Network Provider in order to provide its urgent response medical service. The Company pays the Telecom Taxes on its purchase of Telecommunications service from the Network Provider and the urgent response medical service provided to its customers is nontaxable.

THE PHONES

The Company is a reseller of Telecommunications from the Network Provider with respect to the Phones sold to Customers. Since the Company separately states its charges for minutes, text messaging, data, and the Company-provided add on services, there is no bundling of services provided by the Company.

The Telecom Taxes are imposed on persons originating Telecommunications in the state of municipalities. Under the MTSA, this means all taxes, fees, and surcharges are imposed on Customers whose place of primary use, or billing address, is the state (or municipality for the SMTT).

The Company is liable for the Telecom Taxes because it sells Telecommunications at Retail. Telecommunications includes the charges on the Company's invoices for minutes and text messaging. However, since the add-on services provided by the Company for the elderly assistance are not bundled with charges for Telecommunications, and the Illinois statutes do not specifically subject these services to tax, these services are not subject to Telecom Taxes.

Additionally, providing access to the Internet is a non-taxable service under the Internet Tax Freedom Act. Therefore, all charges for "data" for the phone that is a smartphone are not subject to any of the above taxes and fee.

REQUEST FOR CONFIRMATION

Based on the facts as described herein and Illinois law, the company respectfully requests rulings from the Department that:

- The Company, and all other similar products and service providers, are providing a nontaxable urgent response medical service in connection with the URMDs. All Telecommunications services are consumed by the Company and any Telecommunications Taxes imposed in Illinois are paid by the Company when it purchases Telecommunications services from the Network Provider.
- The Phones are mobile communications devices subject to the Telecom Taxes on the gross billings of usage minutes charged and text messages charged but not on data charges or add-on-services.

- All Telecom Taxes listed are the full extent of taxes on wireless Telecommunications services that may be charged to or passed along to consumers for resellers of wireless communications.

There are no audits or litigation pending with the Department regarding this issue. To the best of the knowledge of the Company and its representative, the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor

If the Department does not agree with each of the conclusions stated herein, the Company respectfully requests a meeting with the Department prior to the issuance of any written statement in this matter. If there is any additional information that would be helpful to you in responding to this request, please call me at (404) 581-8012 or email me at LAWFIRM.COM, or PERSON at (XXX) XXX-XXXX or LAWFIRM.COM.

DEPARTMENT'S RESPONSE:

A person seeking a PLR binding on the Department must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. One of the conditions for obtaining a PLR is the identification of the taxpayer seeking the PLR. You have advised the Department that you are not seeking a PLR on the behalf of the Company but are seeking a GIL. In your letter you seek confirmation of the Company's interpretation of how various laws and regulations apply to the Company. The purpose of a GIL is to direct a taxpayer to Department regulations or other sources of information regarding the topic about which it has inquired. The purpose of a GIL is not to render a ruling or confirm a taxpayer's interpretation of the law or regulations to a specific set of facts. The Department cannot provide the confirmations you have requested. You are free to file a request for a PLR.

Telecommunications Excise Tax

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" 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 630/2(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).

Internet Access

The Internet Tax Freedom Act imposes a federal moratorium on state or municipal taxes on Internet access. 47 USCA § 151 note; § 1101. “Internet access”:

(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold-

(i) to provide such service; or

(ii) to otherwise enable users to access content, information or other services offered over the Internet;

(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as 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;

(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and

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

Telecommunications that are purchased, used or sold by a provider to enable users to connect to the Internet or to otherwise enable users to access content, information or other services offered over the Internet are subject to the federal moratorium. 47 USCA § 151 note; § 1101(B). Generally, data plans provided by mobile or wireless telecommunications providers are subject to the moratorium.

Telematic Services

In ST 12-0041 (GIL) the Department had an opportunity to respond to a taxpayer inquiry regarding a telematic service that allowed customers to contact the provider to summon help or roadside assistance, or obtain information, either automatically in the case of a collision or through the press of a button. The call centers did not have the ability to contact customers through the telematics units. The call center could only call the contact numbers that the customers provided to the company. In addition, customers did not have the ability to make outbound calls or receive inbound calls using the Telematics unit, as the telematics unit was not connected to the Public Switched Telephone Network. The Department responded:

“Telematic services that allow only voice and data communications between a customer vehicle and a call center and do not permit the customer to make calls to, or receive calls from, the public switched telephone network are considered information services and are not subject to Telecommunications Excise Tax. In those situations, the telematics service provider would be liable for Telecommunications Excise Tax on telecommunications services purchased from vendors and used by it to provide telematic services.”

It is important to note that the Department’s decision in ST 12-0041 was based on representations made by the company that the company was providing a service and the communications provided were merely a component of that service. The Department may reach a different result in the future based on different set of facts if the Department concludes that the services being provided are in fact telecommunications services.

I would also note that the company incurs Telecommunications Excise Tax liability on the standard cell phone service offering mobile telecommunications services.

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

RSW:bkl