

ST 16-0044-GIL 09/07/2016 TELECOMMUNICATIONS EXCISE TAX

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. See 86 Ill. Adm. Code Part 495. (This is a GIL).

September 7, 2016

Dear Xxxxx:

This letter is in response to your letter June 29, 2016, in which you requested 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:

I have asked COMPANY 1 what this State Tax is that I am being charged for on our late fee. I was sent **§ 14-113.10. Penalties**. If a "penalty" is added to the base retail price because the purchaser does not timely pay the selling price and the penalty is paid to the seller, such penalty is a part of the gross receipts and is included in the selling price. ROT Reg. § 130.420.

I do not understand this explanation.

I called your 800 number and they did not have an answer and when I explained the tax was 6.99% I was transferred to Telecommunication Excise Tax department. Reviewing the information the Telecommunication Excise Tax department was unable to answer my question. I was instructed to write the legal department for help.

My question is: Are late fees taxable to the consumer and if yes what taxes am I paying? As you can see on the attached COMPANY 1 bill the detail says State Tax.

I hope you can shed some light in my direction.

## DEPARTMENT'S RESPONSE:

### 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. The incidence of the tax is on the person who originates or terminates intrastate or interstate telecommunications, and the tax is collected and remitted to the Department by the retailer of the telecommunications. The combined rate of State and local telecommunications taxes in Hoffman Estates presently is 13%.

“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 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. 86 Ill. Adm. Code 495.100(c). Section 495.100 identifies a number of items that are not included in “gross charges” for purposes of the Telecommunications Excise Tax.

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.

Generally, as a result of the moratorium, data plans provided by wireless carriers that allow users to access the Internet are not subject to the Telecommunications Excise Tax.

If a late fee is not separately stated from the charges for telecommunications, the late fee would be subject to Telecommunications Excise Tax. If a late fee is separately stated from the charges for telecommunications, the charges for the late fee are not subject to Telecommunications Excise Tax.

### Sales Tax

Telecommunications retailers often sell tangible personal property, such as cellular phones, phone chargers and other related items. The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 35 ILCS 120/2; 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. 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales.

Generally, home rule and non-home rule municipalities, counties, school districts and special districts may impose local occupation taxes. See Illinois Municipal Code (65 ILCS 5) and Counties Code (55 ILCS 5). Special Districts (for example, airport, forest preserves, fire protection, park, sanitary, transit and water) can be found in Chapter 70 of the Illinois Compiled Statutes beginning with 70 ILCS 5 and ending at 70 ILCS 3720. Not all units of local government impose a local occupation tax, and not all units of local government impose the same rate of tax.

A tax rate finder is located on the Department's website. The combined rate of State and local occupation taxes imposed in the portion of Hoffman Estates located in Cook County is 10%. The

combined rate of State and local occupation taxes imposed in the portion of Hoffman Estates located in Kane County is 8%.

Where any tangible personal property is sold under installment contracts, the interest or finance charges on account of credit so extended are not considered to be a part of the "selling price" in computing Retailers' Occupation Tax liability. 86 Ill. Adm. Code 130.420(a). Generally, when sellers make sales and, as part of the agreements for those sales, charge a finance charge on any unpaid balance of the purchase price, those sales would be treated similarly to installment sales for the purpose of application of Section 130.420(a). The books and records of retailers must clearly reflect such finance or interest charges.

If a "penalty" is added to the base retail price in the event that the purchaser does not pay such price within a specified time and such penalty is paid to the seller, such "penalty" becomes a part of the taxable receipts from the sale. 86 Ill. Adm. Code 130.420(b).

Whether a charge is considered a finance charge or a penalty for purposes of the application of Section 130.420 will depend on the specific terms of each sale agreement. The determination may also be affected by the types and amount of charges customarily charged to customers in that kind of trade.

After a review of the copy of the invoice you provided, we cannot determine the nature and purpose of the charges reflected on the invoice. I would also note that the invoice combines in one charge taxes, governmental surcharges and fees.

You may wish to contact Consumer Services at the Illinois Commerce Commission for further assistance.

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,

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RSW:bkl