

The state government exemption in the Telecommunications Excise Tax Act applies to the 50 states. 35 ILCS 630/2. (This is a GIL.)

December 4, 2019

Re: Request for Illinois Telecommunications Excise Tax Private Letter Ruling

Dear XXX:

This letter is in response to your letter dated August 2, 2019, 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 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:

The purpose of this letter (“Letter”) is to request a private letter ruling under 86 Ill. Admin. Code § 1200.110 on behalf of COMPANY and its affiliates AFFILIATES on which COMPANY may rely. Specifically, COMPANY requests a private letter ruling that, for purposes of the Telecommunication Excise Tax Act, 35 ILCS § 630, *et seq.* (the “Act”), sales of telecommunication services to non-Illinois State governments, and agencies and instrumentalities of such State governments, are exempt from the telecommunication excise tax (the “Tax”).

No audit or litigation is pending with the Illinois Department of Revenue (the “Department”) involving COMPANY regarding the issues presented below. We note, however, that AFFILIATE is under a telecommunications excise tax and infrastructure maintenance fund tax audit by the Department for the period of January 20XX through May 20XX. In addition, AFFILIATE currently has a case pending before the Illinois Tax Tribunal related to use tax. Neither COMPANY nor any representatives of COMPANY have previously submitted a ruling request related to the same or similar issues to those presented below to the Department but withdrew them before a letter ruling was issued. We note, however, that, on June 6, 2019, the Department issued a GIL to the STATE Department of Revenue

on this issue with respect to its purchases of telecommunications services from COMPANY, which GIL is attached hereto as Exhibit A and referenced herein.

FACTS

COMPANY provides telecommunication services to customers throughout the United States, including Illinois. COMPANY collects the Tax from its customers in Illinois except to the extent such customers are exempt from Tax under the Act. Among COMPANY's customers in Illinois are various non-Illinois state governments, including agencies and instrumentalities of such state governments, with local offices in Illinois.

RULINGS REQUESTED

Whether COMPANY's sale of telecommunication services to non-Illinois State governments, (and agencies and instrumentalities of such governments) (collectively, "States other than Illinois") are exempt from the Tax under 35 ILCS § 630/2k.

EXPLANATION OF GROUNDS TO SUPPORT REQUEST

Pursuant to Act, the Tax is imposed upon the act or privilege of originating or receiving intrastate and interstate telecommunication in Illinois. 35 ILCS § 630/3 and 4. The Tax is measured by the gross charges for such telecommunications purchased at retail. *Id.* Any retailer maintaining a place of business in Illinois is required to collect the Tax from its customer and remit such Tax to the Department. 35 ILCS § 630/5.

The term "purchased at retail" means the "acquisition, consumption or use of telecommunications through a sale at retail." 35 ILCS § 630/2k. The term "sale at retail" means:

“[t]he transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for 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 § 630/2k (emphasis supplied). Thus, the transmission, supply or furnishing of telecommunications to "State governments" is not subject to Tax. However, the Act does not provide clarity as to whether the term "State governments" refers only the State of Illinois or to States other than Illinois as

well. In addition, the Act does not provide clarity as to whether the exemption extends to agencies and instrumentalities of such State governments.

Due to this lack of clarity, the Department of Revenue of STATE (the "STATE") recently requested a General Information Letter ("GIL") from the Department as to whether telecommunications services purchased by the STATE from COMPANY, for the benefit of its personnel located in Illinois, is subject to the Tax. The GIL described the law as follows:

"DEPARTMENT'S RESPONSE:

The Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate and 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 only purchasers who can purchase telecommunications tax-free are Federal and State governments, State Universities created by statute, and wholly owned corporate subsidiaries purchasing from the parent or wholly owned subsidiary. 35 ILCS 630/2. The Department of Revenue, an agency of the STATE, falls within exemption for state governments and is exempt from the tax imposed by the Telecommunications Excise Tax."

In light of the Department's response above, COMPANY respectfully requests a private letter ruling from the Department concluding that both Illinois and States other than Illinois fall within the exemption from the Tax set forth in 35 ILCS § 630/2k for sales of telecommunications services to "State governments."

COMPANY is not aware of any authorities contrary to the requested ruling.

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions, or would like any additional information. *We respectfully request a conference in the event you tentatively conclude that an adverse ruling would be warranted.* Powers of attorney, authorizing the undersigned to represent COMPANY in this matter are attached as Exhibit B. This ruling request pertains only to periods beginning after the date hereof.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope however, the following General Information Letter will be helpful in addressing your questions.

The Telecommunications Excise Tax Act ("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. Purchasers who can purchase telecommunications tax-free include the federal and State governments, State Universities created by statute, and wholly owned corporate subsidiaries purchasing from the parent or other wholly owned subsidiary. 35 ILCS 630/2.

In ST-19-0056-GIL (June 6, 2019), the Department stated that a revenue department of a state other than Illinois qualified for the state government exemption contained in the Act and was exempt from the tax imposed by the Telecommunications Excise Tax.

The state government exemption contained in the Act applies to Illinois and the other 49 states and the agencies and instrumentalities of the states. The agencies and instrumentalities of state government may be executive, legislative or judicial in nature. It is not possible for the Department to specifically identify the agencies and instrumentalities that qualify for the exemption. It should be noted however that the fact that an entity may be created by state statute or receives funding from a state government does not necessarily qualify the entity for the exemption.

I hope this information is helpful. 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
Associate Counsel

RSW:rkn