

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 35 ILCS 630/1 *et seq.* (This is a GIL.)

October 29, 2010

Dear Xxxxx:

This letter is in response to your letter dated September 7, 2010, 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:

I am filing the attached Use tax report of the second quarter 2010. We have had a problem with our vendor(s) collecting and remitting taxes to the wrong states, so we are filing use tax for these purchases. We have requested a refund from Indiana, but have not yet received it. In the mean time, [sic] we are filing a use tax return with Illinois (the location where the equipment was installed).

In addition, I believe that the majority of these purchases will qualify under the IL state manufacturing sales tax exemption, as they do in Missouri. However, prior to using this exemption, I am requesting a letter ruling from your state's sales tax division to insure that it will be approved by Illinois. Therefore, we are filing this return and paying the taxes with the understanding that we will probably be requesting a refund as soon as we receive the letter ruling.

We provide telecommunications services, so we are also filing RT-2. All sales taxes are paid on the RT-2. In the future, we may file a sales tax return for small incidental retail sales as necessary. At the moment, we are still in the startup stage and have three locations is [sic] Illinois, two of which may have retail sales at some time in the future.

After the third quarter we will probably not have any more use tax to file. This tax was on the purchases used to build our network used to manufacture telecommunication products. Most supplies and other costs will be purchased in the state of Illinois and will be taxed when purchased.

DEPARTMENT'S RESPONSE:

Although we cannot give you a specific answer in the form of a General Information Letter, we hope you find the following helpful.

Telecommunications

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 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.

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).

Use Tax

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. See 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. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

Unless there is an exemption, 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. If the retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code 150.130.

Manufacturing Machinery & Equipment

Persons who sell tangible personal property must either pay tax or document an exemption. The Manufacturing Machinery and Equipment Exemption from sales tax is available for sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. The process must meet the requirements of manufacturing or assembling set forth in the Department's rules. In addition, the machinery or equipment must be used primarily (over 50% of the time) in a qualifying manufacturing or assembling process. Exemption certificates must be executed by the purchaser and submitted to the retailer. See 86 Ill. Adm. Code 130.330(g). Form ST-587, Machinery and Equipment Exemption Certificate, may be used to document the Manufacturing Machinery and Equipment exemption.

Please note, however, that while some states may allow a manufacturing machinery & equipment exemption for telecommunication equipment, Illinois does not.

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,

Debra M. Boggess
Associate Counsel

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