

This letter discusses “prepaid telephone calling arrangements” and prepaid calling plans. See 35 ILCS 120/2-7. (This is a GIL.)

September 11, 2013

Dear Xxxxx:

This letter is in response to your letter dated April 25, 2013, 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](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:

Pursuant to 2 Ill. Adm. Code 1200.110, COMPANY (“COMPANY”) respectively petitions the Illinois Department of Revenue (IDOR) for a private letter ruling to classify COMPANY as a ‘Prepaid Telephone Calling Arrangements’ company.

**General Information**

1. COMPANY is the taxpayer making a request for a private letter ruling.
2. This petition for a PLR is not requested in regards to hypothetical or alternative proposed transactions. The PLR is requested to the extent that it is the actual business practice of COMPANY. COMPANY began transacting business in the manner described below on or about September 1, 2011.
3. COMPANY is not currently under audit by the IDOR.
4. COMPANY is not currently engaged in litigation with the IDOR with regard to this or any other tax matter.

5. To the best knowledge of COMPANY, the IDOR has not previously ruled regarding this matter for the company. Neither COMPANY nor its tax representative submitted a request for a private letter ruling of the same or similar issue to the IDOR.
6. COMPANY requests that certain information be deleted from the PLR prior to dissemination to others. COMPANY requests the deletion of its name, the name of its representative or officer, address and telephone number.
7. COMPANY determines that there are no authorities contrary to its views and it is unable to locate such authority.

### **Tax Period at Issue**

July 2012 to present.

### **Statement of Material Facts**

COMPANY is a Competitive Local Exchange Carrier (CLEC) offering prepaid calling arrangements for home phone services to its end users. The company respectively petitions the Illinois Department of Revenue to classify COMPANY as a 'Prepaid Telephone Calling Arrangements' company based on the following;

1. COMPANY is registered as a prepay company with the Illinois Department of Revenue.
2. Our customers are not required to pass a personal credit check or sign a binding contractual agreement to receive prepaid home phone from COMPANY.
3. COMPANY offers various types of prepay home phone service plans. The customer is allowed to prepay for home phone services calling time by purchasing one of the following service packages:
  - A. Total number of days of services
  - B. Full month of service
  - C. Total amount of calls
  - D. Specific amount of long distance minutes with their local plan
4. The customers are allowed to prepay or add-on calling features (For example, caller id and call waiting, etc.) or have specific calling features included in a prepaid call package.

5. Upon receiving the customer's prepayment for home phone service, COMPANY manually programs our access codes to reflect the time and amount of services pre-purchased. After the information is successfully programmed, the customer can begin to use all available service options that have been paid for in advance.
6. Once the prepaid calling time has expired or has been completely consumed, no further service is provided unless purchased, replenished or recharged.

### **Pertinent Law and Regulations**

Due to its prepay business classification, COMPANY is required to remit Illinois Sales and Use Tax pursuant to the Retailer's Occupation Tax (35 ILCS § 120/1 et seq.) and Service Occupation Tax (35 ILCS § 115/1 et seq.) and the Service Use Tax (35 ILCS § 110/1 et seq.) and the Use Tax (35 ILCS § 105/1 et seq.), specifically:

Section 2 of the Retailers' Occupation Tax Act, 35 ILCS 120/2, states:

A tax is imposed upon persons engaged in the business of selling at retail tangible personal property, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for public commercial exhibition. Beginning January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under this Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed.'

Section 2-27 of the Retailers' Occupation Tax Act, 35 ILCS 120/2-27 defines 'prepaid calling arrangements as follows:

Prepaid telephone calling arrangements' mean the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, 'recharge' means the purchase of additional prepaid telephone or

telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, 'telecommunications' means that term as defined in Section 2 of the Telecommunications Excise Tax Act. 'Prepaid telephone calling arrangement' does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan.

COMPANY meets the definition of 'prepaid calling arrangements' and is not subject to remit the Telecommunication Excise Tax, pursuant to sections 86 Ill. Adm. Code 495, 35 ILCS 630/3 and 4, which states:

...Beginning (on and after) January 1, 2001, prepaid telephone calling arrangements shall not be considered telecommunications subject to the Telecommunications Excise Tax...

### **Requested Ruling**

COMPANY request a private letter ruling to classify COMPANY as a 'prepaid telephone calling arrangements company,' pursuant to section 2-27 of the Retailers' Occupation Tax Act, 35 ILCS 120/2-27. COMPANY believes that it meets the definition of 'Prepaid telephone calling arrangements' in accordance to 35 ILCS 120/2-27. COMPANY will use its business classification to ensure the proper taxes are rendered to the Illinois Department of Revenue.

### **Request for a Conference**

COMPANY respectfully request a telephone conference to discuss this matter, if the IDOR believes such a discussion may be helpful or if the Illinois Department of Revenue may otherwise intend to render a ruling contrary to COMPANY's position. If you have any questions, you may reach me at XXX-XXX-XXXX.

### **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 declines to issue a Private Letter Ruling. Although we are not providing you with a Private Letter Ruling, we hope the following general information will be of assistance.

Telecommunications Excise Tax Act

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.

“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 herewith 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)

### Prepaid Calling Arrangements

Beginning January 1, 2001, prepaid telephone calling arrangements are considered tangible personal property subject to the tax imposed under the Retailers' Occupation Tax Act, regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. 35 ILCS 120/2. The 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 at a rate of 6.25%. Under the Use Tax Act, a tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer. The Use Tax Act applies when tangible personal property is purchased anywhere at retail. In essence, the retailer collects the Use Tax from the customer to reimburse it for the

Retailers' Occupation Tax paid by it to the State. Prepaid telephone calling arrangements are also subject to retailers' occupation taxes imposed by units of local government.

"Prepaid telephone calling arrangements" mean the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. "Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. 35 ILCS 120/2-27. Prepaid telephone plans that do not meet the definition of a "prepaid telephone calling arrangement" are taxed under the Telecommunications Excise Tax. Paying in advance recurring monthly charges for telecommunications services obtained under a subscription plan does not convert telecommunications services into a prepaid telephone calling arrangement.

Generally, a prepaid call package such as the one you have described, qualifies as a prepaid calling arrangement and is subject to tax imposed under the Retailers' Occupation Tax Act.

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,

Richard S. Wolters  
Associate Counsel

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