ST-19-0011-GIL 06/06/2019 TELECOMMUNICATIONS

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

June 6, 2019

Dear Xxxx:

This letter is in response to your e-mail dated May 8, 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:

> It was a pleasure speaking with you today. Thank you for taking the time to discuss this issue and assisting in clarifying the proper application of the Illinois law with respect to state government customers. The Department of Revenue of STATE (the "STATE") purchases MPLS telecommunications services from COMPANY for the benefit of its personnel located in Illinois. During the course of a telecommunications audit, the STATE determined that COMPANY was applying the Illinois Telecommunications Excise Tax to STATE transactions. In July XXXX, the STATE submitted a claim to COMPANY to cease these charges and to credit the STATE for past erroneous charges. As we discussed, the basis of the STATE request is 35 ILCS 630, also known as and cited as "Telecommunications Excise Tax Act" (TECA). The applicable language, Section 2(k), reads as follows:
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> "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a 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.
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> On January 17, XXXX, COMPANY denied the STATE'S claim arguing that the Section 2(k) does not clarify whether all state governments are exempt from the tax or only the state governments of Illinois (i.e., its political subdivisions). The STATE disagrees with COMPANY's decision and interprets the Illinois law to exempt other state governments like STATE. If the Illinois General Assembly intended to only include state governments of Illinois, then presumably the wording in Section 2(k) would have been written to

specifically exclude all state governments outside of the State of Illinois. The interpretation that the exemption includes all state governments is consistent with the language included in TETA guidance published online by the Illinois Department of Revenue.

COMPANY has informed the STATE it would agree to reopen the previously denied claim and consider cessation of billing the Illinois Telecommunications Excise Tax and crediting past TETA-related charges back to the STATE if the Illinois Department of Revenue issues a General Information Letter clarifying that **all state entities are exempt from taxation**.

The STATE respectfully requests a General Information Letter from the Illinois Department of Revenue to clarify whether state governments outside of Illinois are exempt from taxes applied under TETA.

Thank you for your time.

DEPARTMENT'S RESPONSE:

The 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 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 other 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.

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:rkn