ST 19-0017-GIL 08/27/2019 TELECOMMUNICATIONS EXCISE TAX

This letter discusses the taxability of telecommunications services provided to inmates. 35 ILCS 630/5. (This is a GIL.)

August 27, 2019

Dear Xxxx:

This letter is in response to your letter dated July 16, 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:

Facts:

A telecom company that provides telephone service to IDOC offenders has an option for "offender debit accounts" where IDOC facility commissaries collect money from offenders and the money collected is forwarded to the telecom company to be applied to the offender debit accounts. IDOC acknowledges that the telecom company is required to pay certain taxes for offender phone services. However, 730 Ill. Comp. Stat. 5/3-4-1 (a-5) and Public Act 099-0878 govern how taxes and fees may be collected from IDOC offenders, and states:

> Beginning January 1, 2018, the Department of Central Management Services shall contract with the qualified vendor who proposes the lowest per minute rate not exceeding 7 cents per minute for debit, prepaid, collect calls and ***who does not bill to any party any tax, service charge, or additional fee exceeding the per minute rate,*** including, but not limited to, any per call surcharge, account set up fee, bill statement fee, monthly account maintenance charge, or refund fee... (Emphasis added).

Based on the statute and Public Act quoted above, which prohibits the telecom company from collecting any taxes and fees above the agreed per minute rate for phone calls, the telecom company has stopped collecting taxes and fees from IDOC offenders and has asked IDOC to complete a certificate of resale, which

should be backdated to the date when the telecom company stopped collecting taxes from IDOC offenders. The telecom company asserts that the way in which IDOC commissaries collect money from offenders for phone services and forwards the money to the telecom company to apply to offender debit accounts, constitutes a "resale arrangement." Additionally, the telecom company asserts that 35 Ill. Comp. Stat. 120 is applicable to IDOC. IDOC requests guidance with respect to the questions below.

Issues & Questions:

1. Does the offender debit account system, which requires IDOC to collect money from offenders for phone services through facility commissaries and forward the money paid by offenders to the telecom company, create a resale an arrangement?

2. Can IDOC complete a certificate of resale in this situation?

3. Can the certificate of resale be backdated?

4. If IDOC can complete a certificate of resale, does 35 Ill. Comp. Stat. 120 render the sale of phone services to offenders untaxable (in other words, does 35 Ill. Comp. Stat. 120 state that government entities such as IDOC are not required to collect or pay any taxes from offender purchases of phone services due to the state tax exemption status)?

Thank you for your review and we look forward to receiving a Technical Advice Memorandum from IDOR.

DEPARTMENT'S RESPONSE:

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. 35 ILCS 630/3 and 630/4.

"Gross charge" 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. In case credit is extended, the amount thereof shall be included only as and when paid.

"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.

"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. 35 ILCS 630/2.

Section 495.105 of the Department's rules states:

> "The exemption for State Governments and State universities created by statute extends only to telecommunications purchased by such entities for their own use. Such entities are not exempt from the obligation to collect and remit tax on sales of telecommunications to others when they act as retailers of telecommunications. For example, a university would be exempt from Telecommunications Excise Tax on purchases, by the university, of telecommunications services for use by its faculty and staff in the course of their duties. However, the same university would have an obligation to collect and remit tax on sales of telecommunications services to students in university dormitories."

86 Ill. Adm. Code 495.105. Based on the Act and this rule, if IDOC sells at retail telecommunication services to inmates, those services would be subject to Telecommunications Excise Tax.

It is the Department's understanding that the Department of Central Management Services (CMS) has contracted with PROVIDER to provide telephone service to offenders housed in IDOC facilities. The offenders may not receive calls but can make collect calls to persons on their approved list of persons permitted to receive calls. Offenders may set up an offender debit account and make payments at IDOC facility commissaries. The payments are forwarded by IDOC to PROVIDER. Based on the facts presented, it is the Department's position that PROVIDER is the provider of the telecommunications services to the offenders. It is also the Department's position that IDOC, by collecting moneys from offenders and forwarding the moneys to PROVIDER, is not acting as a retailer or reseller of telecommunications service. Because IDOC is not acting as a retailer of telecommunications services, IDOC cannot provide a certificate of resale to PROVIDER.

In your letter, you point out that the General Assembly amended the Unified Code of Corrections by adding a new subsection (a-5) to Section 3-4-1.

> "(a-5) Beginning January 1, 2018, the Department of Central Management Services shall contract with the qualified vendor who proposes the lowest per minute rate not exceeding 7 cents per minute for debit, prepaid, collect calls and who does not bill to any party any tax, service charge, or additional fee exceeding the per minute rate, including, but not limited to, any per call surcharge, account set up fee, bill statement fee, monthly account maintenance charge, or refund fee as established by the Federal Communications Commission Order for state prisons in the Matter of Rates for Interstate Inmate Calling Services, Second Report and Order, WC Docket 12-375, FCC 15-136 (adopted Oct. 22, 2015). Telephone services made available through a prepaid

> or collect call system shall include international calls; those calls shall be made available at reasonable rates subject to Federal Communications Commission rules and regulations, but not to exceed 23 cents per minute. This amendatory Act of the 99th General Assembly applies to any new or renewal contract for inmate calling services."

P.A. 99-0878 is codified at 730 ILCS 5/3-4-1(a-5). The plain language of subsection (a-5) states that CMS shall contract with a vendor that proposes the lowest rate per minute, not exceeding $0.07 per minute, for debit, prepaid and collect calls. However, it clearly provides the selected vendor is prohibited from *billing* any party, including the offender, for any tax, service charge or additional fee exceeding the $0.07 per minute rate.

The Federal Communications Commission in its Second Report and Order did not prohibit telecommunications carriers from adding certain ancillary charges to the rates charged offenders purchasing telecommunications services, including mandatory applicable pass-through taxes and regulatory fees, as long the carriers did not add any additional mark-up or fees. *Rates for Interstate Inmate Calling Services*, Second Report and Order, WC Docket No. 12-375, FCC 15-136 (Oct. 22, 2015), at paras. 191-192.

Section 5 of the Telecommunications Excise Tax Act states that any retailer maintaining a place of business in the State shall collect and remit to the Department the tax imposed by the Telecommunication Excise Tax Act. The retailer is liable for the tax whether or not the tax has been collected by the retailer. 35 ILCS 630/5. While subsection (a-5) prohibits PROVIDER from adding the tax on the offender's bill, it does not relieve PROVIDER from liability for paying the tax to the Department.

The Department concludes that PROVIDER is a telecommunications carrier, is providing telecommunications services to offenders, and is liable for Telecommunications Excise Tax on the sale of telecommunications services to offenders based on the gross receipts received from such sales.

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