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.)

December 13, 2019

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:

COMPANY ("the Company") respectfully requests a private letter ruling confirming COMPANY's Fleet Management Service is exempt from sales/use tax as a non-taxable service and that COMPANY's purchase of mobile telecommunication services are exempt internet access charges.

I. Background

COMPANY provides onboard telematic fleet management information to companies with truck fleets throughout the U.S. To facilitate these services, COMPANY installs an onboard computing ("OBC") device with sensors that collect information about vehicle location and other useful data about the vehicle (e.g. speed) and the driver (e.g. driver logs).

To communicate information gathered in the vehicle, the device is equipped with a modem that's assigned an internal IP address. The device transmits information using a communications network operated by a third-party cellular network, such as PROVIDER 1 or PROVIDER 2. COMPANY procures data plans from the communications provider.

The communications carrier sends the data over the public internet to one of the three COMPANY Network Operating Centers ("NOC") that are in STATES. From there, COMPANY's systems track and compile performance data that can be viewed by its customers on the COMPANY web-based platform through desktops, tablets etc.

Generally, COMPANY enters into a Master Purchase Agreement ("MPA") with Customers, whereby COMPANY provides its OBC and communication system for Customers' trucks. Per these agreements, COMPANY sells and then installs the OBC in its Customers' trucks.[1] Once the

[1] See Exhibit A and Exhibit B

OBC systems are installed, COMPANY provides Customers a monthly service that includes COMPANY's communication system and data access. The primary benefit from this system is real-time GPS vehicle location information that allows Customers to optimize routes and communicate delivery information.

The MPA may include the following services:

- Engine diagnostics (Fault Code Monitoring) - reports sent directly to user's internal applications alerting of engine problems;
- Driver performance management tools;
- Fleet Manager Web Access;
- Onboard Event Recording ("OER") - Detailed reports and graphs including all engine and accident data necessary to recreate the events before and after an accident: time, latitude/longitude, road speed, engine speed, heading, RPM, cruise control status, accelerator status, ignition switch status, SET switch status, coast status, resume status, accelerator switch status, brake status, clutch status, parking brake status, fix type and fix quality;
- eDriver Logs - automates reporting of on-duty driving hours by sending reports of when vehicles are moving and stopped;
- Vusion - Provides reports analyzing fuel usage by analyzing the engine control module (over- speed, over-RPM, idle time, excess-speed), GPS (temperature, topography), dispatch (load weight), vehicle (vehicle age, engine size, make and model) and fuel purchases
- Wireless updates for OBC software.

A customer procures COMPANY services with a flat-monthly fee per vehicle, which may vary depending on the complement of services selected (e.g. $$$ per vehicle).[2] There is not a separate charge for resold telecommunications.

COMPANY collects and remits tax on the tangible personal property OBC and other hardware sold to Customers. This ruling concerns the monthly fee COMPANY charges its Customers for the integrated telematics solution and the mobile telecommunications services that COMPANY acquires.

II. Question

1. Is COMPANY's purchase of data telecommunications from a mobile communication provider subject to the Telecommunications Excise Tax ("TET")?
2. Is COMPANY's monthly fee per vehicle subject to TET or sales tax?

III. Conclusions

1. No. The Federal Internet Tax Freedom Act ("ITFA") restricts the ability of Illinois to impose TET on "internet access."[3] Illinois issued multiple GIL's finding that data service providers that provide wireless internet access are exempt from the TET, pursuant to ITFA, even if bundled with taxable voice communications. Thus, COMPANY's purchase from cellular communication providers of

[2] See Exhibit C
[3] 47 U.S.C. § 151 note, §1101

data connectivity and instant messaging are not subject to TET.

2. No. The DOR issued a GIL stating that a telematics provider was the consumer of telecommunications and the service provided to the telematics customer was a nontaxable information service and not subject to sales and use tax or TET. In another GIL the DOR determined a medical device company incurred TET on bundled urgent response medical device services provided to patients. COMPANY also offers a service that is bundled with telecommunications and provides a similar information service to the telematics provider that the DOR determined did not owe TET or sales tax to the end user customer.

IV. Analysis

A. Relevant Authorities

Illinois imposes a 7% tax on gross charges for intrastate and interstate telecommunications purchased at retail.[4]

Statutes

Sec. 3 Illinois [35 ILCS 630/3] [Imposition of tax on intrastate telecommunications]

"*... Beginning January 1, I998,* ***a tax is imposed upon the act or privilege of originating in this State or receiving in this State intrastate telecommunications by a person in this State at the rate of 7% of the gross charge for such telecommunications purchased at retail from a retailer by such person.*** *However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the State. Beginning January 1, 2001, prepaid telephone calling arrangements shall not be considered telecommunications subject to the tax imposed under this Act." (Emphasis added.)*

Sec. 4 Illinois [35 ILCS 630/4] [Imposition of tax on interstate telecommunications]

"*... Beginning January 1, 1998,* ***a tax is imposed upon the act or privilege of originating in this State or receiving in this State interstate telecommunications by a person in this State at the rate of 7% of the gross charge for such telecommunications purchased at retail from a retailer by such person****. To prevent actual multi-state taxation of the act or privilege that is subject to taxation under this paragraph, any taxpayer, upon proof that that taxpayer has paid a tax in another state on such event, shall be allowed a credit against the tax imposed in this Section 4 to the extent of the amount of such tax properly due and paid in such other state. However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the State. Beginning on January 1, 2001, prepaid telephone calling arrangements shall not be considered telecommunications subject to the tax imposed under this Act* ". (Emphasis added.)

[4] 35 Ill. Comp. State § 630/3; 35 Ill. Comp. State § 630/4

Telecommunications means:

*"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. s used in this Act, "private line" means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. T**he definition of "telecommunications" shall 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.** "Telecommunications" shall not include purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale"* [5] *(Emphasis added)*

35 ILCS 630/2(d)

"Interstate telecommunications" means all telecommunications that either originate or terminate outside this State. "

35 ILCS 630/2(e)

"Intrastate telecommunications" means all telecommunications that originate and terminate within this State.

35 ILCS 630/2(a)

"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. "Gross charges" for private line service shall include charges imposed at each channel termination point within this State, charges for the channel mileage between each channel termination point within this State, and charges for that portion of the interstate inter-office channel provided within Illinois. Charges for that portion of the interstate inter-office channel provided in Illinois shall be determined by the retailer as follows: (i) for interstate inter-office channels having 2 channel termination points, only one of which is in Illinois, 50% of the total

[5] 35 Ill. Comp. State § 630/2(c)

charge imposed; or (ii) for interstate inter-office channels having more than 2 channel termination points, one or more of which are in Illinois, an amount equal to the total charge multiplied by a fraction, the numerator of which is the number of channel termination points within Illinois and the denominator of which is the total number of channel termination points. Prior to January 1, 2004, any method consistent with this paragraph or other method that reasonably apportions the total charges for interstate inter-office channels among the states in which channel terminations points are located shall be accepted as a reasonable method to determine the charges for that portion of the interstate inter-office channel provided within Illinois for that period. However, "gross charges" shall not include any of the following:

…

35 ILCS 630/2(a)(10)

Charges for nontaxable services or telecommunications if (i) those charges are aggregated with other charges for telecommunications that are taxable, (ii) those charges are not separately stated on the customer bill or invoice, and (iii) the retailer can reasonably identify the nontaxable charges on the retailer's books and records kept in the regular course of business. If the nontaxable charges cannot reasonably be identified, the gross charge from the sale of both taxable and nontaxable services or telecommunications billed on a combined basis shall be attributed to the taxable services or telecommunications. The burden of proving nontaxable charges shall be on the retailer of the telecommunications.

Regulations

The definition of "gross charges" has an exclusion for certain data processing and information retrieval services.

86 ILAC 495.100(c) ***Gross charges does not include charges for the storage of data or information for subsequent retrieval or charges for the processing of data or information intended to change its form or content*** *(Section 2(a)(3) of the Act). Charges for answering services, for example, whether provided electronically or by live operators, represent charges for the storage of information or data for subsequent retrieval, and are not subject to tax, provided that these charges, if provided in connection with taxable telecommunications, are disaggregated and separately identified in the books and records of the retailer. Charges for automated data storage, retrieval and processing services or for the use of computer time or other equipment are not included in gross charges. Automated information retrieval or data processing charges are not included in gross charges. For example, a customer who accesses an on-line computer data base would not be subject to tax on the charge for the data processing or inquiry, but would be subject to tax on the charge for the transmission of the data. If a telecommunications retailer provides both transmission and data processing services, the charges for each must be disaggregated and separately identified in the books and records of the retailer.*

86 ILAC 495.100(d) 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 are exempt (Section 2(c) of the Act). For example, the charges for computer data, protocol conversions that permit computers to exchange data, no matter which languages or protocols a computer's out-put may be in, and packet-switching, which groups data into packets for efficiency of transmission, would be exempt.

86 ILAC 495.100(m) Generally, persons that provide customers access to the Internet ("Internet Service Providers" or "ISPs") and who do not, as part of that service, charge customers for the line or other transmission charges that are used to obtain access to the ISP's server or other point of access, are not considered to be telecommunications retailers from these activities. This is the case so long as such ISPs do not, as part of their billing, charge customers for such line charges and instead pay their telecommunications suppliers all transmission costs that they incur in providing the Internet service. In this situation, an ISP's customer pays his telecommunications supplier for all transmission costs incurred while using the service. The single monthly fee charged by the ISP, which often represents a flat charge for a package of items including Internet access, e-mail, and electronic newsletters, would generally not be subject to tax. If, however, the ISP charges customers for line or other transmission charges, it should provide its telecommunications suppliers with Certificates of Resale and should collect and remit the tax. For example, if an ISP provides customers with Internet access, as described in this subsection, but also provides customers the use of a 1-800 service to access the ISP, and separately assesses customers per minute charges for the use of the 1-800 service, the ISP is considered a telecommunications retailer and incurs Telecommunications Excise Tax on the charges made for the 1-800 service. If the charges are not disaggregated as provided in subsection (c), all charges are subject to the Telecommunications Excise Tax.

Federal Internet Tax Freedom Act ("IFTA")

ITFA forbids state and local government from imposing tax on "internet access" charges.[6]

SEC. 1101. MORATORIUM.

"(a)Moratorium--No State or political subdivision thereof shall impose any of the following taxes during the period beginning on October 1, 1998, and ending 3 years after the date of the enactment of this Act--

(1) taxes on Internet access, *unless such tax was generally imposed and actually enforced prior to October 1, 1998; and*

(2) multiple or discriminatory taxes on electronic commerce".

(Emphasis added)

"Internet access" means:

(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

(B) *includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold-*

(i) to provide such service; or

[6] 47 U.S.C. §151 note, §1101

> *(ii) to otherwise enable users to access content, information or other services offered over the Internet;*
>
> *(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;*
>
> *(D)* ***does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and***
>
> *(E) includes a homepage, electronic mail and instant messaging (including voice and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access. (Emphasis added.[7])*

B. Is COMPANY's purchase of data telecommunications from a mobile communication provider subject to the Telecommunications Excise Tax ("TET")?

Illinois imposes TET on the privilege of intrastate and interstate telecommunications.[8] Taxable telecommunications include the use of a "cellular mobile telecommunication service."[9] However, ITFA restricts the ability of Illinois to impose TET on " internet access."[10]

"Internet access" means:

> *(A) means a service that enables users to* ***connect to the Internet to access content, information, or other services offered over the Internet;***
>
> ….
>
> *(E) includes a homepage, electronic mail and instant messaging (including voice and video-capable electronic mail and* ***instant messaging****), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access[11]. (Emphasis added.)*

COMPANY purchases data services from communication providers, which allows COMPANY to *connect to the Internet to access content, information or other services offered over the Internet.* COMPANY also offers *instant messaging* services to customers. Both services fit the definition of "internet access" and Illinois is restricted by Federal law to tax those services.

The Illinois Department of Revenue ("DOR") has consistently ruled that ITFA exempts cellular internet access from TET, even if bundled with taxable voice communications. Illinois excludes nontaxable services or telecommunications from the definition of "gross charges", even if the

[7] 47 U.S.C. §151 note, §1105(5)
[8] 35 Ill. Comp. State § 630/3; 35 Ill. Comp. State § 630/4
[9] 35 Ill. Comp. State § 630/2(c)
[10] 47 U.S.C. §151 note, §1101
[11] 47 U.S.C. §151 note, §1105(5)

charges are not separately stated.[12] The DOR ruled that a commercial wireless broadband data service met the definition of an exempt "internet access" service.[13] The company purchased and resold mobile broadband data plans from cellular and PCS wireless carriers like PROVIDER 3, PROVIDER 1, and PROVIDER 4. The company bundled the data plans with charges for taxable services. The DOR ruled that ITFA allows a provider to exclude charges for exempt internet access from taxable services, even when not separately stated.[14] Accordingly, COMPANY's purchase of data connectivity and instant messaging from cellular communication carriers is not subject to TET.

C. Is COMPANY's monthly fee per vehicle subject to TET or sales tax?

In 2012, the DOR issued a GIL stating that a telematics provider was the consumer of telecommunications, and the service provided to the telematics customer was a nontaxable information service and not subject to sales and use tax or TET.[15] The company provided telematics services with a basic package that offered automatic collision notification, roadside assistance, Safe Ride cab calling service, remote door lock and unlock, search and send driving directions, weather information, stolen vehicle location assistance, alarm notification, and emergency call response. A Plus Package included the basic package, plus location-based traffic information, route assistance, traffic information, and concierge services. Customers could only connect to the vendor's call centers, which were located outside Illinois.

The GIL noted the exclusion from gross charges for processing of data or information.

> *"Telematic services that allow only voice and data communications between a customer vehicle and a call center and do not permit the customer to make calls to, or receive calls from, the public switched telephone network are considered information services and are not subject to Telecommunications Excise Tax."*

The DOR determined that the telematics service provider was the party liable for the TET on the purchase of telecommunications services from a communications provider. Accordingly, the sale to the telematics customer was not subject to sales and use tax or TET.

Likewise, the DOR determined that an urgent response medical device service provided to patients was not subject to TET.[16] Instead, the telecommunications were consumed by the medical device company and any voice usage minutes were taxable to the medical device company, but data charges or add-on services were not taxable due to the ITFA. The DOR stated that the telematics service addressed in ST 12-0041-GIL was not subject to TET because the "company was providing a service and the communications provided were merely a component of the service." Thus, the true object of the bundled service was a nontaxable service, not a telecommunication subject to TET. Instead, the telematics provider owed TET on the telecommunications services it consumed. However, the DOR noted that the medical device company incurred TET liability on the standard cell phone service offering because it wasn't bundled with nontaxable services. This implies that if the telecommunications service is separately stated to the end user customer, the service provider

[12] 35 Ill. Comp. State § 630/2(a)(1)
[13] General Information Letter ST 11-0028-GIL, Illinois Department of Revenue, April 6, 2011
[14] 47 U.S.C. §151 note, §1105
[15] General Information Letter ST 12-0041-GIL, Illinois Department of Revenue, July 27, 2012.
[16] General Information Letter ST 16-0032-GIL, Illinois Department of Revenue, July 29, 2016

would incur TET on the telecommunications service sold to the end user customer. In that instance, the service provider would be reselling taxable telecommunication services.

Similar to the facts outlined in both GIL's, COMPANY provides a service that bundles telecommunications as a component of the service. The true object of the COMPANY service is processed data and information gathered from tracking fleet vehicles. COMPANY bundles the service for one monthly fee per vehicle. COMPANY's telematic services are nontaxable information services in Illinois and are not subject to sales and use tax or TET. Further, COMPANY is the consumer of any telecommunications that are a component of a bundled service offering.

* * * * *

COMPANY respectfully requests a Private Letter Ruling confirming the taxability of two sales:

1. COMPANY's Fleet Management Service is exempt from sales/use tax as a non-tax service;
2. COMPANY's purchase of cellular data telecommunication services are exempt internet charges

To the extent you have any questions or concerns regarding this request, COMPANY would appreciate the opportunity to have a telephone call at ###-###-#### to address any questions or concerns with the analysis and request.

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, that the following General Information Letter will be helpful in addressing your question.

Sales 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* 35 ILCS 120/2; 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* 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. 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 reduce the amount of Use Tax they must remit by the amount of Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

Service Transactions

Retailers' Occupation Tax and Use Tax do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services (*i.e.*, servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. The transfer of tangible personal property to service customers may result in either Service Occupation Tax liability or Use Tax liability for servicemen, depending upon which tax base they choose to calculate their liability.

Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

If a transaction does not involve the transfer of any tangible personal property to the customer, then it generally would not be subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax.

Telecommunications Excise Tax

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" does 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 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. "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).

Internet Access

The Internet Tax Freedom Act imposes a federal moratorium on state or municipal taxes on Internet access. 47 USCA § 151 note; § 1101. "Internet access":

> (A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;
>
> (B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold-
>
> > (i) to provide such service; or
> >
> > (ii) to otherwise enable users to access content, information or other services offered over the Internet;
>
> (C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;
>
> (D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and
>
> (E) includes a homepage, electronic mail and instant messaging (including voice and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access.

Telecommunications that are purchased, used or sold by a provider to enable users to connect to the Internet or to otherwise enable users to access content, information or other services offered over the Internet are subject to the federal moratorium. 47 USCA § 151 note; § 1101(B). Generally, data plans provided by mobile or wireless telecommunications providers are subject to the moratorium.

Services

In ST 11-0028-GIL, ST 12-0041-GIL, and ST 16-0031-GIL, the Department had the opportunity to respond to taxpayer inquiries regarding certain services and determine whether the services were telecommunications services subject to Telecommunications Excise Tax. In ST 12-0041, the Department responded:

> "Telematic services that allow only voice and data communications between a customer vehicle and a call center and do not permit the customer to make calls to, or receive calls from, the public switched telephone network are considered information services and are not subject to Telecommunications Excise Tax. In those situations, the telematics service provider would be liable for Telecommunications Excise Tax on telecommunications services purchased from vendors and used by it to provide telematic services."
> In ST 16-0032, the Department clarified its decision in ST12-0041:
>
> "It is important to note that the Department's decision in ST 12-0041 was based on representations made by the company that the company was providing a service and the communications provided were merely a component of that service. The Department may reach a different result in the future based on different set of facts if the Department concludes that the services being provided are in fact telecommunications services."

It does not appear that the company is providing a telecommunications service to its customers, and the communications the company provides are merely a component of the company's service. However, the Department does not have sufficient information to determine whether the telecommunications services you purchase from PROVIDER 1 and PROVIDER 2 are in fact Internet access. If the services you purchase are not Internet access or are not used to provide Internet access to your customers, you would be liable to PROVIDER 1 and PROVIDER 2 for Telecommunications Excise Tax.

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