

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 86 Ill. Adm. Code 495. (This is a GIL.)

December 16, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated November 6, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are requesting your opinion in writing on the enclosed (1) tax question. (Note: These are hypothetical scenarios, because we aren't at liberty to reveal names and figures from our clients.

Thank you so much for you assistance, and we will be waiting to here from you soon!

Your attachment reads as follows:

We request your opinion on the following tax question.

FACTS:

ABC is a software company in CITY. XYZ is a data network provider with the highest rating possible for day-to-day network reliability.

Because reliability is so crucial to its business, ABC desired to enter into a contract with XYZ. ABC was willing to pay XYZ a contract signing bonus of \$200,000 as an incentive for XYZ to commit to being its data network provider for three years. This payment was to be in addition to the monthly regular charges that all of XYZ's customers pay for service.

Scenario A: ABC wrote a \$200,000 check payable to XYZ on the day the contract was signed.

Scenario B: XYZ billed ABC \$200,000 on the first month's invoice. It was shown as a separate line on the invoice labeled 'Contract Bonus'.

QUESTION:

For each scenario, is the \$200,000 subject to the State of Illinois 7% Telecom Tax?

If possible, please address the two opposing arguments:

1) The argument for taxing the \$200,000:

Despite its description as 'Contract Bonus,' it is really a payment for telecommunications service.

2) The argument against taxing the \$200,000:

It is a cash payment, not a payment for telecommunications usage. Thus it is not subject to the state's Telecommunications Tax.

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Section 2(c) of the Telecommunications Excise Tax Act ("Act") provides that "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.

Pursuant to Section 495.100(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 material used, labor or service cost or any other expense whatsoever.

A retailer may provide services to customers which are not provided in connection with originating or receiving telecommunications. If such services are not necessary for or directly related to the retailer's provision of telecommunications to customers and the charges for such services are disaggregated and separately identified from other charges, the charges need not be included in "gross charges". If the non-telecommunications charges are not disaggregated from the telecommunications charges, the full amount will be subject to Telecommunications Excise Tax. If none of the charges billed are for telecommunications, then none of the charges would be subject to tax.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.