

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 Part 495. (This is a GIL).

September 2, 2008

Dear Xxxxx:

This letter is in response to your letter dated November 6, 2006, 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 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:

This letter is a private letter-rule request to the Illinois Department of Revenue ('Department') to issue a formal opinion concerning the taxability of 9-1-1 services for the ABC under the Illinois Simplified Municipal Tax. This request is made under Department Regulation Section 1200.110.

INVOLVED PARTIES

ABC
XYZ

TAX PERIOD AT ISSUE

2002-Present (November 6, 2006)

BUSINESS REASON FOR THIS TRANSACTION

ABC believes they are losing a sizable portion of their income due to unwarranted taxation from XYZ.

DETAILED DESCRIPTION OF THE TRANSACTION

ABC is responsible for provision and administration of 9-1-1 services in un-incorporated [sic] COUNTY, Illinois. This responsibility includes, but is not limited to, purchasing 9-1-

1 service and other administrative telecommunications services to protect the citizens of COUNTY and to provide Public Safety personnel with the tools and equipment necessary to keep the public safe.

The COUNTY ABC purchases 9-1-1 services from XYZ, which is a taxable service. The 9-1-1 services offered and their rates are defined in XYZ's Illinois Tariff 19, section 8, which is on file with the Illinois Commerce Commission. At its most basic level, 9-1-1 service is comprised of Trunks (which are lines or circuits that connect telephone equipment) connected to a Selective Router. These lines, or trunks, that connect to the selective router are known as 'A' Links. These 'A' Links are provided by each local exchange carrier, or telephone companies like XYZ.

The Selective Router determines, based on the telephone number that dialed the 9-1-1 call, which Emergency System Number (ESN) the call should be sent to. The ESN, in turn, determines which route the 9-1-1 call should take to arrive at the correct Public Safety Answering Point (PSAP). PSAP's are the physical locations where 9-1-1 phone calls are answered, and the COUNTY ABC has several PSAPs. These PSAP's, for the most part [sic] located in un-incorporated [sic] areas of COUNTY. The few PSAP's not located in un-incorporated [sic] areas of COUNTY are located in various municipalities that have inter-Governmental agreements with the COUNTY ABC stating that COUNTY is not subject to their taxations. These municipalities are located in Appendix 1 of this document. The PSAP's physical location is termed the Service Address.

From the selective router, the original phone call placed to 911 goes to the Central Office of a phone company. Between the Central Office and the PSAP, there are lines or circuits in between the two that are known as the 'B' Link. Specifically, these 'B' Links are point-to-point telephone circuits from the Central Office that provides service, or the phone call, to the PSAP's physical location. The PSAP's location is the actual 911 office. Hence, the terminating point of 911 services is also call [sic] the service address because that is where the service they are providing is employed. Point-to-Point Circuits (like the 'B' Links used to connect a central phone office to a 911 office) have the starting point of the circuit designated as the 'A Point.' The end of the circuit [sic] designated as the 'B Point'. Since 9-1-1 is an inbound only service, meaning that phone calls cannot be made using the 9-1-1 service and that people can only dial into 911, (see SBC Tariff 19 Section 8), the 'B' point, or the terminating point in the case of 911 services is the service address of the PSAP.

The Illinois Simplified Municipal Tax requires that upon a sale of telephone service from a telecommunications provider a tax is levied. XYZ, whom COUNTY ABC purchases 911 telephone services from, utilizes a Tax Area Revenue (TAR) code to apply taxes to customer bills. More specifically, the TAR code is a 2 or 3 digit number assigned to each account and is based on the service address. The assignment of the TAR is what XYZ uses to determine the taxes to apply to each account and the tax rate. With COUNTY ABC 911 service, the service address, or the address which is supposed to be used to determine taxing, is located for the most part in un-incorporated [sic] areas of COUNTY, meaning it is 'A Point' to determine the Tax Area Revenue (TAR) code. This is done according to an XYZ representative because 'that's the way it is placed in order, the 'A' location as service comes out of CO [Central Office].'

All of this means that XYZ is currently taxing the 911 service COUNTY is purchasing from them based on the 'A' point and not the 'B' point (the service address) where the 911 service is being used, located in un-incorporated [sic] areas. XYZ is not following

the appropriate guideline for taxation which requires taxation based on the service address, and is over-charging COUNTY ABC in taxes.

Enclosed are copies of the Customer Service Records (CSR) from XYZ for COUNTY ABC. Please note the terminating, or Service Location is not the XYZ Central Office but the various PSAP's under the jurisdiction of the ABC. Again, the physical location of the PSAP is in fact the service location and the end point of 911 service. Also enclosed is a copy of a spreadsheet detailing the 9-1-1 Service Line and the TAR code applied to each of these Service Lines.

OPINION REQUESTED

The COUNTY ABC requests an opinion of which physical location of the 9-1-1 services should determine the tax liability of the ABC. More specifically, the COUNTY ABC would like the Illinois Department of Revenue's opinion as to whether the 911 service being purchased by COUNTY should be taxed at the originating point (the 'A' point at the XYZ Central Office) or at the terminating point (the 'B' point at the Service Address where the service is used).

RELEVANT LAW AND ANALYSIS

Public Acts from the State of Illinois state that the tax applies where the service address is for each network connection.

From the State of Illinois Public Acts, 92nd General Assembly, Public Act 92-0557:

(b) For purposes of computing the surcharge imposed by subsection (a), the network connections to which the surcharge shall apply shall be those in-service network connections, other than those network connections assigned to the municipality or county, where the service address for each such network connection or connections is located within the corporate limits of the municipality or county levying the surcharge.

More specifically, this Public Act states that that [sic] the tax collected upon the telecommunications services that they are selling should be based upon the 'B' point, or service address of a PSAP. Put in a different way, the 911 surcharge, or tax, is based on the subscriber's location, which is the PSAP or 911 office.

The Simplified Municipal Telecommunications Act also states that telecommunications retailers (such as XYZ) collect the tax based on the service address located in the municipality. However, unincorporated areas do not pose 911 taxation as incorporated municipalities do. Therefore, 911 surcharges cannot be imposed in unincorporated areas.

Additionally, XYZ representatives have verbally indicated that there is no clear reason as to why the 911 taxes are applied based on the 'A' point (see page 2, paragraph 2). Also, the TAR code used for taxation by XYZ clearly states that the service address is the point to be used to determine taxation. In the case of 911 services this is the PSAP or the 911 office.

Therefore, this [sic] taxes currently being charged to COUNTY ABC should not be applied to 9-1-1 Service Lines since the majority ABC's PSAP service addresses are in unincorporated COUNTY where taxation cannot be charged. The remaining PSAP's located in municipalities are based on inter-Governmental agreements that clearly state that the COUNTY ABC is exempted from that municipalities' [sic] taxation, and therefore the taxation of the 9-1-1 service as well.

To the best of COUNTY ABC's knowledge, the Courts of Illinois have not addressed this issue, and there are no relevant [sic] cases to help interpret the Simplified Municipal Telecommunications Act. Therefore, this issue of unjustifiable taxation has never been addressed before the Courts of Illinois or been challenged [sic] in a court of law.

To the best of COUNTY ABC's knowledge, the Illinois Department of Revenue ('Department') are [sic] not aware of any previous ruling by the Department concerning this tax issue which contradicts the above analysis. If the Department needs more information or is considering not providing the opinion requested above, COUNTY ABC requests that there be a conference between its representative and the Department before any private letter ruling is issued.

CONCLUSION

Based on the above, we believe that COUNTY ABC's purchase of 9-1-1 services is not subject to the Simplified Municipal Tax because the service is not present in a municipality, and if it is, it is not subject to the taxes of that particular municipality. The COUNTY ABC's 9-1-1 services terminate in unincorporated areas, or areas where it is tax-exempt of [sic] COUNTY because that is where the service is being used. The official terminating point of COUNTY 911 service is at the service address of the PSAP. XYZ is incorrectly taxing the service at the Originating point of the Service Line (where the service is not being used). Due to the inflexible and arbitrary manner in which SBC applies the TAR code COUNTY ABC is paying local tax on service that is clearly not taxable due to its' [sic] location and usage. COUNTY ABC requests an opinion of the physical location of 911 services are (either the 'A' point or 'B' point to determine the tax liability of the ABC.

If you have any questions concerning the above, please COUNTY requests a Department representative to contact them before any private letter ruling be made.

Thank you again for your time and cooperation in this matter.

DEPARTMENT'S RESPONSE:

The Department has reviewed the materials the COUNTY ABC ("Board") and its consultant have provided to the Department. Based on the last submission by the Board's consultant, it appears the Board is requesting a ruling relating solely to the taxability of the trunks between the Board's Public Safety Answering Point ("PSAP") located at ADDRESS, Illinois in unincorporated COUNTY and selective routers located in XYZ's CITIES wire centers or central offices.

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. "Gross charges" for private line service shall include charges imposed at each channel termination point within this State and charges for the channel mileage between each channel termination point within this State. The tax imposed shall be collected from the taxpayer by a retailer maintaining a place of business in this State and remitted to the Department. 35 ILCS 630/5.

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. "Gross charges" for private line service shall include charges imposed at each channel termination point within a municipality that has imposed a tax under this Section and charges for the portion of the inter-office channels provided within that municipality. Charges for that portion of the inter-office channel connecting 2 or more channel termination points, one or more of which is located within the jurisdictional boundary of such municipality, shall be determined by the retailer by multiplying an amount equal to the total charge for the inter-office channel by a fraction, the numerator of which is the number of channel termination points that are located within the jurisdictional boundary of the municipality and the denominator of which is the total number of channel termination points connected by the inter-office channel. The tax imposed shall be collected from the taxpayer by a retailer maintaining a place of business in this State and remitted to the Department. 35 ILCS 636/5-40.

"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 630/2k; 35 ILCS 636/5-7. Counties and other public bodies are not excluded from the definition of a "sale at retail" and are subject to both the Telecommunications Excise Tax Act and the Simplified Municipal Telecommunications Tax Act.

As explained to the Department by the Board, generally a 911 call made by a person is routed to the central office serving that customer. At the central office the call is routed over trunks or lines purchased by the Board from XYZ to a control office containing a selective router. The Board refers to this trunk as the "A" trunk. The selective router routes the call to the appropriate PSAP over trunks purchased by the Board from XYZ. The Board refers to this as the "B" trunk. The Board also refers to the control office as the "A" point of the "B" trunk and the PSAP as the "B" point of the "B" trunk. The Board believes XYZ is inappropriately taxing the "B" trunks based on the location of the "A" point. The Board believes the taxability of the "B" trunks should be based on the "B" point, or what the Board claims is its service address.

The Illinois Commerce Commission rules generally require the use of dedicated trunks for 911 circuits. See 83 Ill. Adm. Code 725.500(c). Furthermore, XYZ's tariff states that Enhanced 911 service offerings provide routing via dedicated trunks to all primary PSAPs and to secondary PSAPs. XYZ Tariff, Ill. C.C. No. 20, Part 8, Section 3, Universal Emergency Number Service – 911. Dedicated trunks are private lines. See *Newton's Telecom Dictionary*, 23rd Edition. It is the Departments' position that dedicated "A" and "B" trunks are private lines for purposes of the Telecommunications Excise Tax Act and the Simplified Municipal Telecommunications Tax Act. The "A" and "B" points are the locations where the dedicated trunks, or private lines, terminate and are considered channel terminations for purposes of the Telecommunications Excise Tax Act and the Simplified Municipal Telecommunications Tax Act

It is not possible to determine from the invoices and tariffs the Board provided to the Department what specific services the Board is purchasing from XYZ or how XYZ is billing the Board for the services it purchases. However, all of the telecommunications services the Board purchases from XYZ would be subject to the Telecommunications Excise Tax Act. Furthermore, channel terminations, or "A" and "B" points, and the portion of inter-office private lines, or "A" and "B" trunks, located within a municipality that has a Simplified Municipal Telecommunications Tax would be included in gross charges for purposes of the tax. The four municipalities where the selective routers are located do impose a Simplified Municipal Telecommunications Tax. Channel terminations and the portion of the private lines lying within these jurisdictions would be subject to the tax. Channel terminations and the portion of the private lines lying within jurisdictions without a Simplified Municipal Telecommunications Tax would not be subject to the 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. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk