

This letter discusses dark fiber. See 35 ILCS 630/2. (This is a GIL.)

February 1, 2024

NAME
COMPANY
ADDRESS

Dear NAME:

This letter is in response to your letter dated January 18, 2024, 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 <https://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:

Hello,

I am writing to get guidance on whether my business, COMPANY, should be charging telecommunications excise tax on our services. All our services are dark fiber, where we own the network but do not provide any lit/wireless services to end users.

We typically offer two types of services –

- 1) Indefeasible Right of Use (IRU) is a contractual agreement (temporary ownership) of a portion of the capacity of a cable. As the name suggests, the contract provides an indefeasible right to use a cable and cannot be annulled or voided.
- 2) We also offer the right to use strands (not indefeasible) to our customers in between two locations.

Per the telecom guidance, it does not appear that we should be charging tax; however, we have competitors that we buy services from that include a tax on the invoices.

Please assist.

DEPARTMENT'S RESPONSE:

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 by such persons. 35 ILCS 630/3 and 4; 86 Ill. Adm. Code 495.140. 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 by such persons. 35 ILCS 636/5-10 and 5-15. The incidence of the tax is on the person who originates or terminates intrastate or interstate telecommunications, and the tax is collected and remitted to the Department by the retailer of the telecommunications.

"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(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. 86 Ill. Adm Code 495.100(a). "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." 86 Ill. Adm. Code 495.100(c).

Dark fiber is "[o]ptical fiber through which no light is transmitted and which, therefore, no signal is being carried. Generally speaking, a dark fiber is one of many fibers contained within a cable." Newton's Telecom Dictionary, 23rd Edition (2007). Dark fiber has no electronics on it, no light is sent down the fiber, and no information is transmitted.

"Telecommunications," means "messages or information transmitted . . . between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities." See 35 ILCS 630/2(c). Dark fiber strands provided on a long-term lease basis pursuant to an Irrevocable Right to Use, or IRU, do not meet the definition of "telecommunications" and are not subject to Telecommunications Excise Tax. Dark fiber strands (not infeasible) provided to customers between two locations also do not meet the definition of "telecommunications" and are not subject to Telecommunications Excise Tax.

Your email provides insufficient information to comment on the tax liability on services or tangible personal property you acquire from your competitors.

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:sc