

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 8.65%, effective July 1, 2025, of the gross charges for such telecommunications purchased at retail from retailers. 35 ILCS 630/3(c) and 4(c), as amended by Public Act 104-0006. (This is a GIL).

October 17, 2025

NAME
COMPANY1
ADDRESS

Dear NAME:

This letter is in response to your letter dated July 24, 2025, 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.

Whether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. 2 Ill. Adm. Code 1200.110(a)(4). If there is case law or there are regulations dispositive of the subject of the request, the Department will decline to issue a private letter ruling on the subject. 2 Ill. Adm. Code 1200.110(a)(3)(D). The Department recently met and determined that it would decline to issue a Private Letter Ruling in response to your request. We hope, however, the following General Information Letter will be helpful in addressing your questions. In your letter you have stated and made inquiry as follows:

FACTS

COMPANY2 was established on DATE, to provide telephone service to LOCATION Illinois. Today, the cooperative serves approximately NUMBER1 members across NUMBER2 exchanges in NUMBER3 communities, offering a wide range of telecommunication and Internet access services. COMPANY2

has a wholly owned subsidiary, COMPANY3, which is accounted for on a consolidated basis. From time to time, COMPANY2 enters into agreements to provide access to infrastructure to COMPANY3, as well as to third-party customers. In addition, COMPANY3 enters into substantially similar agreements with third-party customers directly. COMPANY2/COMPANY3 are seeking this ruling in relation to two revenue streams: (1) dark fiber; and (2) local loop. COMPANY3 and COMPANY2 file as a unitary group for Illinois income tax purposes, and the taxability of dark fiber is an issue in common for the two entities; as such, the entities are not prohibited from receiving a joint ruling under Illinois Administrative Code 1200.110(3)(A)(ii).

Dark Fiber:

COMPANY2/COMPANY3 enters into agreements for the lease of dark fiber optic cable facilities.¹ Exhibits to the agreement define the specific dark fiber facilities being provided, i.e., dark fiber running between defined points.² The agreement also provides route maps and engineering specifications documenting that the leased dark fiber is encased in conduit and buried underground, accessible only through established junction boxes.³ The leased dark fiber is solely for the use of the lessee identified in the agreement.⁴ The agreement does not require COMPANY2/COMPANY3 to provide any transmission service, i.e., *light* the fiber.⁵ The lessee is responsible for any interconnections necessary to facilitate the transmission.⁶ The lease agreement is for a minimum term of twelve months, and automatically thereafter reverts to a month-to-month lease.⁷ The agreement in Exhibit A is a renewal of a materially identical lease agreement for dark fiber that was first executed in 2013.⁸ Exhibit A is being included as a representative example of COMPANY2/COMPANY3's dark fiber agreements with customers. Although Exhibit A is specific to one customer, COMPANY2/COMPANY3 uses an identical contract template for all of its dark fiber agreements.⁹ The periods at issue for this contract are January 1, 2025 – present, as well as future renewal periods for this contract.

Local Loop:

¹ Exhibit A – COMPANY2 & COMPANY2 Lease

² *Id.*

³ *Id.*, Exhibit B COMPANY2 Fiber Build Process

⁴ *Id.* at I.

⁵ *Id.*

⁶ *Id.* at 2.

⁷ *Id.* at 3.4

⁸ *Id.* at I.

⁹ Exhibit C – Statement from Management

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Separate and apart from its dark fiber revenue stream, COMPANY2/COMPANY3 and the same lessee have engaged in an agreement for the purchase of digital subscriber line (“DSL”) access services of two different types:

- 1) Local loop access standalone: A broadband-only line at a fixed \$\$\$ per line,
- 2) Local loop access with telephone: A wireline Internet and voice phone line for \$\$\$ per month.¹⁰

The two types of local loop services are sold under separate pricing models as outlined above. The respective prices are representative of COMPANY2/COMPANY3’s tariff rate for these services. Further, the two types of local services are separately stated on invoices. The periods at issue for this contract are January 1, 2025 – present, as well as future renewal periods for this contract.

ISSUES

- 1) Is COMPANY2/COMPANY3’s provision of dark fiber subject to the Illinois Telecommunications Excise tax?
- 2) Is COMPANY2/COMPANY3’s provision of dark fiber equipment subject to the Illinois Retailer’s Occupation tax?
- 3) Is COMPANY2/COMPANY3’s provision of local loop service exempt from both Illinois Telecommunications Tax and Illinois Retailer’s Occupation tax by virtue of being a wholesale transaction?

CONCLUSIONS

- 1) COMPANY2/COMPANY3’s provision of dark fiber is not subject to the Illinois Telecommunications Tax.
- 2) COMPANY2/COMPANY3’s provision of dark fiber equipment is not subject to the Illinois Retailers’ Occupation tax because it is real property, not tangible personal property.
- 3) COMPANY2/COMPANY3’s provision of local loop service is exempt from both Illinois Telecommunications Tax and Illinois Retailer’s Occupation Tax because it is a wholesale transaction.

DISCUSSION & ANALYSIS

¹⁰ Exhibit D Wholesale Agreement

1. *COMPANY2/COMPANY3's provision of dark fiber is not subject to the Illinois Telecommunications Excise tax.*

Illinois imposes the Telecommunications Excise Tax ("TET") on the gross charges for originating or receiving telecommunications in Illinois.¹¹ The tax is measured by the gross charge for telecommunications purchased at retail.¹² *Telecommunications* is broadly defined to include, 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.¹³

Dark fiber is commonly defined in the telecommunications industry as "[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."¹⁴ Dark fiber has no electronics on it, no light is sent down the fiber, and no information is transmitted.¹⁵ Per Illinois guidance, dark fiber strands provided to customers between two locations also do not meet the definition of "telecommunications" and are not subject to TET.¹⁶

Here, COMPANY2/COMPANY3 leases dark fiber to its customer. The fiber is not lit, i.e., COMPANY2/COMPANY3 is not providing any transmission, and the lessee is responsible for interconnection that would allow the lessee to transmit information via the fiber. Given no transmission is being provided, this revenue stream is not captured within the definition of a telecommunications service subject to the TET. Further, longstanding administrative guidance published by the Illinois Department of Revenue explicitly states that dark fiber is not a telecommunications service subject to the TET.

2. *COMPANY2/COMPANY3's provision of dark fiber is not subject to the Illinois Retailers' Occupation tax because it is real property, not tangible personal property.*

¹¹ 35 ILCS § 630/4.

¹² Id.

¹³ 35 ILCS § 630/2(c).

¹⁴ Newton's Telecom Dictionary, 23rd Edition (2007).

¹⁵ Id.

¹⁶ Illinois Dept. of Rev. General Information Letter ST 24-0004-GIL, 02/01/2024.

The Retailers' Occupation Tax Act ("ROT"), commonly referred to as sales tax, imposes a tax upon persons engaged in the business of selling at retail tangible personal property.¹⁷ A transaction that involves a lease with a dollar or other nominal option to purchase is considered to be a conditional sale from the outset, and all of the receipts from the transaction are subject to the sales tax.¹⁸ Illinois retailers' occupation (sales) tax does not apply to receipts from sales of real property.¹⁹

Longstanding administrative guidance published by the Illinois Department of Revenue states that dark fiber may be viewed as either real or tangible personal property depending on whether the fiber is aerial or buried, respectively.²⁰ As stated in the guidance:

A review of IAC 130.220 appears to support that the IRU agreement for 'dark fiber' could be classified as a rental of tangible personal property for the aerial cable and related equipment. Due to part of the fiber optic cable being buried it appears this may be deemed an affixation to realty..."²¹ When fiber optic cable is permanently attached to real property, whether installed underground or above ground to telephone poles, it becomes real property for sales tax purposes.²²

We note that the second sentence quoted above seems to contradict the first, in that it expands the position that dark fiber is *real property* to both buried and aerial cable, whereas the earlier sentence implies that only buried cable would be viewed as real property. The Department of Revenue's interpretation of buried dark fiber as real property is consistent with precedential Illinois case law. Illinois has also applied the *intention test* and annexation analysis in determining whether property is evaluated as real property or tangible personal property.²³ Under the *intention test*, three criteria are applied to evaluate whether property is personal or real.²⁴ First, the property must be annexed to the realty or to something appurtenant thereto; second, the property must be applied to the use or purpose to which that part of the realty, with which it is connected, is appropriated; and finally, the party making the

¹⁷ 35 ILCS 120/2

¹⁸ Ill. Admin. Code 130.2010(a).

¹⁹ Ill. Admin. Code 130.120(b).

²⁰ Illinois Dept. of Rev. General Information Letter ST 01-0234-GIL, 11/13/2001.

²¹ Id.

²² Id.

²³ WILLIAM G. BEELER, *Petitioner-Appellee*, v. JAMES BOYLAN, *McLean County Treasurer, Respondent-Appellant*, 106 Ill App 3d 667 62 Ill Dec 385 435 NE2d 1357, 05/19/1982.

²⁴ Id.

annexation must intend to make a permanent accession to the freehold.²⁵ The annexation analysis determines that annexation may be either actual or constructive.²⁶

Here, COMPANY2/COMPANY3's provision of dark fiber likely meets the above test in being evaluated as real property. The dark fiber is annexed to the realty, as it is buried and installed underground, and underground dark fiber has been recognized as being permanently attached to real property.²⁷ The dark fiber is applied to the use or purpose of the property it is buried in, as COMPANY2/COMPANY3 has entered into agreements with property owners to excavate trenches and then bury the dark fiber for purposes of connecting geographically distant sites. Finally, COMPANY2/COMPANY3 intended to make a permanent accession to the property in installing the dark fiber due to the nature of the installation and continuing demand for dark fiber services. Based on the intention test, COMPANY2/COMPANY3's provision of dark fiber equipment should be considered as a fixture to real property that is not subject to Illinois' ROT. Further, treating COMPANY2/COMPANY3's lease of buried dark fiber as real property exempt from ROT is consistent with the DOR's previous guidance on the subject.

3. COMPANY2/COMPANY3's provision of local loop service is exempt from both Illinois Telecommunications Tax and Illinois Retailer's occupation tax because it is a wholesale transaction.

Illinois imposes the TET on the gross charges for originating or receiving telecommunications in Illinois.²⁸ The tax is measured by the gross charge for telecommunications purchased at retail.²⁹ Similarly, the ROT is imposed on the sale of tangible personal property at retail.³⁰ *Sale at retail* means any transfer of ownership for purposes of use or consumption, and not for the purpose of resale in any form.³¹

Here, as outlined in the agreement, COMPANY2/COMPANY3 is selling the local loop services to the COMPANY3 at wholesale so that COMPANY3 can resell the service to end users. Utilizing the tariff rate for pricing the intercompany, wholesale transaction does not change the character of the

²⁵ Id.; *Sword v. Low* (1887), 122 Ill. 487, 496, 13 N.E. 826, 828; 1 G. Thompson, *Modern Law of Real Property* sec. 56, at 187 (1980); 5 *American Law of Property* sec. 19.3, at 16 (1952)

²⁶ Id.; *State ex rel. Gisholt Machine Co. v. Norsman* (1918), 168 Wis. 442, 169 N.W. 429.

²⁷ Illinois Dept. of Rev. General Information Letter St 01-0234-GIL, 11/13/2001.

²⁸ 35 ILCS § 630/4.

²⁹ Id.

³⁰ 35 ILCS 120/2.

³¹ 35 ILCS 120/1.

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transaction as a wholesale transaction, which wholesale transactions are not subject to either TET or ROT.

The Company, and we, the tax representatives, declare that we have examined this request, including the accompanying documents, and to the best of our knowledge and belief, the facts presented in support of the requested ruling are true, correct, and complete. To the best of Company's knowledge, and our knowledge as representatives, the Company has not previously sought nor received a ruling from the Illinois Department of Revenue on these issues.

In the even that this letter does not, in your view, provide sufficient information to support our conclusions, we would request a meeting to more fully state our position pursuant to Illinois Administrative Code tit. 2, § 1200.110(a)(4). If the Department disagrees with any part or all of the conclusions reached in this letter, we respectfully request the Department contact us prior to the issuance of a letter in response to this request.

DEPARTMENT'S RESPONSE:

I. Retailers' Occupation Tax Act

The Illinois Retailers' Occupation Tax Act ("ROTA") imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. 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. 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. 35 ILCS 105/3-45; 86 Ill. Adm. Code 150.401. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. 86 Ill. Adm. Code 150.130(b). If the purchases occur outside Illinois, purchasers must self-assess their Use Tax liability and remit it directly to the Department. See 35 ILCS 105/3-45; 86 Ill. Adm. Code 150.701(a).

"Sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and *not for the purpose of resale* in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration. 35 ILCS 120/1 (emphasis added). On and after January 1, 2025, the term "sale", when used in the Retailers' Occupation Tax Act, includes a lease. "Lease" means a transfer of the possession or control of, the right to possess or control, or a license to use, but not title to, tangible personal property for a fixed

or indeterminate term for consideration, regardless of the name by which the transaction is called. "Lease" does not include a lease entered into merely as a security agreement that does not involve a transfer of possession or control from the lessor to the lessee. 35 ILCS 120/1.

II. Telecommunications Excise Tax Act

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 8.65%, effective July 1, 2025, of the gross charges for such telecommunications purchased at retail by such persons. 35 ILCS 630/3(c) and 4(c), as amended by Public Act 104-0006. 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, 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. 35 ILCS 630/5.

Except as provided in Section 8 of the Telecommunications Excise Tax Act, the act or privilege of originating or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from the Department and furnishes that number to the retailer in connection with certifying to the retailer that any sale to such person is nontaxable because of being a sale for resale. 35 ILCS 630/8.

"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." 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. 35 ILCS 630/2(a)(10).

“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. 35 ILCS 630/2(a); 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.” 35 ILCS 630/2(a)(3); 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, 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. ST-24-0004-GIL (February 1, 2024).

“Telecommunications,” means “messages or information transmitted . . . between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities.” 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 indefeasible) provided to customers between two locations also do not meet the definition of “telecommunications” and are not subject to telecommunications excise tax. ST-24-0004-GIL (February 1, 2024).

When fiber optic cable is permanently attached to real property, whether installed underground or above ground to telephone poles, it becomes real property. ST-01-0234-GIL (November 13, 2001). Real property is not subject to the Retailers’ Occupation Tax Act. 35 ILCS 12/1. Thus, leases of dark fiber optic cable, whether installed underground or above ground to telephone poles, are not subject to retailers’ occupation tax. However, a construction contractor incurs use tax on his cost price for such cable as tangible personal property that is incorporated into real estate. 86 Ill. Adm. Code 130.1940(c).

When the company purchases optical equipment to light the fiber optic cable in order to sell capacity to other carriers for resale, it owes use tax on the cost price of the equipment. When the company sells capacity to other carriers for resale, it is selling telecommunications for resale and would have to document that the sales are for resale. If

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the lighted fiber optic cable capacity were provided to an end user, telecommunications excise tax would be incurred. ST-24-0004-GIL (February 1, 2024).

Lastly, to dispel any confusion as to what constitutes the Department's guidance in ST-01-0234-GIL, the Department would like to clarify that only the last sentence, from the below quoted language appearing on page 4 of the taxpayer's letter, constitutes the Department's guidance. The preceding two sentences are quoted from the taxpayer's conclusion and are not the Department's guidance.

As stated in the guidance:

A review of IAC 130.220 appears to support that the IRU agreement for 'dark fiber' could be classified as a rental of tangible personal property for the aerial cable and related equipment. Due to part of the fiber optic cable being buried it appears this may be deemed an affixation to realty..." When fiber optic cable is permanently attached to real property, whether installed underground or above ground to telephone poles, it becomes real property for sales tax purposes.

I hope this information is helpful. If you have further questions concerning this General Information Letter, you may contact me at (217) 782-7055. If you have further questions related to the Illinois sales tax laws, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at (800) 732-8866.

Very truly yours,

Katarzyna Kowalska
Associate Counsel

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