

CITY OF CHICAGO
DEPARTMENT OF REVENUE
TELECOMMUNICATIONS TAX REGULATIONS

Effective date: June 1, 2004

Original effective date: January 31, 1992

1. Description of Tax

Effective January 1, 1992, the Chicago Telecommunications Tax (Chicago Municipal Code (“M.C.C.”) chapter 3-70) (hereafter sometimes referred to as the “Telecommunications Tax”) was imposed on the act or privilege of originating or receiving telecommunications in the city of Chicago at a rate of 5% of gross charges. Effective January 1, 1998, the Chicago Telecommunications Infrastructure Maintenance Fee (M.C.C. chapter 3-75) (hereafter sometimes referred to as the “IMF”) was imposed on the act or privilege of originating or receiving telecommunications in the city of Chicago at a rate of 2% of gross charges. Effective January 1, 2003, the Chicago Simplified Telecommunications Tax (M.C.C. chapter 3-73) (hereafter sometimes referred to as “the Simplified Tax” or “tax”) replaced the Telecommunications Tax and the IMF. The rate of the Simplified Tax is 7% of gross charges. In general, the terms of the Simplified Tax are essentially the same as those of the Telecommunications Tax.

The tax is imposed on the act or privilege of originating or receiving telecommunications in the city of Chicago. The tax applies to both intrastate telecommunications (telecommunications that originate and terminate within the state of Illinois) and interstate telecommunications (telecommunications that either originate or terminate outside Illinois). The tax rate is 7% of the gross charge for telecommunications purchased at retail from a retailer. (Municipal Code of Chicago, hereinafter “M.C.C.,” 3-73-030.) Every telecommunications retailer maintaining a place of business in Illinois, which is subject to the jurisdiction of the city, must collect the tax from its customers who originate or receive telecommunications in Chicago. (M.C.C., 3-73-040.) Retailers must register with the department of revenue (M.C.C., 3-73-060) and (in general, subject to the provisions of M.C.C., 3-4-186, 3-4-187, 3-4-188 and 3-4-189) remit the tax to the department on a monthly basis. (M.C.C., 3-73-050.) Retailers who remit the tax in a timely manner may retain 1.0% of the tax collected to reimburse them for collection and remittance expenses. (M.C.C., 3-73-40(D).)

2. Prepaid Telephone Calling Arrangements

Prepaid telephone calling arrangements are not considered telecommunications subject to the Simplified Telecommunications Tax. They are instead subject to state and local sales taxes. "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization

code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. "Prepaid telephone calling arrangement" does not include an arrangement whereby a customer purchases a payment card and pursuant to which the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan.

3. Meaning of "Gross Charge"

The Chicago Simplified Telecommunications Tax is imposed upon the gross charge for telecommunications. (M.C.C., 3-73-030(A).) The term "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in the city of Chicago and for all services 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. No deduction may be taken on account of the cost of the telecommunications, the cost of materials used, labor or service cost or any other expense whatsoever. (M.C. C., 3-73-020(F).) If a retailer provides services that are not necessary for, or directly related to, the retailer's provision of telecommunications to customers, and the charges for these services are disaggregated and separately identified from other charges, then the retailer need not include the charges in gross charges. Examples of these services may include directory advertising, specialized designing or engineering services, specialized security measures and consulting services. "Gross charges" for private line service include charges imposed at each channel point within Illinois, charges for the channel mileage between each channel point within Illinois, and charges for that portion of the interstate inter-office channel provided within Illinois.

4. Customer Equipment Charges

Gross charges do not include charges for customer equipment including equipment that is leased or rented by the customer from any source, but only if the charges are disaggregated and separately identified from other charges. (M.C.C., 3-73-020(F)(4).) For purposes of this provision, customer equipment includes, but is not limited to, all items generally classified as customer equipment or terminal equipment, such as telephone instruments and station sets, dialers, modems, private branch exchanges (PBX's), inside wiring, facsimile machines and pagers. Although charges for customer equipment may not be subject to the Chicago Simplified Telecommunications Tax, the lease or rental of customer equipment may be subject to the Chicago Personal Property Lease Transaction Tax. (M.C.C., chapter 3-32.)

5. Computer-Related Charges

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. (M.C.C., 3-73-020(F)(3).) Automated information retrieval or data processing charges also are not included in gross charges. For example, customers who access on-line computer data bases are subject to the Chicago Simplified Telecommunications Tax on the charge for the transmission of the data, but not on the charge for the data processing or inquiry. If a telecommunications retailer provides both transmission and data processing services, however, the charge for the data processing services will be subject to the tax unless it is disaggregated and separately identified on billing statements and in the books and records of the retailer. In addition, customers who access on-line computer data bases may be subject to the Chicago Personal Property Lease Transaction Tax. (M.C.C., chapter 3-32; Meites v. City of Chicago, 184 Ill.App.3d 887, 540 N.E.2d 973 (1st Dist. 1989).)

6. Value-Added Services

Value added services in which computer processing applications are used to act on the form, content, code and protocol of information for purposes other than transmission are not subject to the Chicago Simplified Telecommunications Tax. (M.C.C., 3-7 3-020(Q)(2).) For example, charges for computer data, and protocol conversions (permitting computers to exchange data, regardless of the language or protocol a computer's out-put may be in) are not subject to the tax. To avoid taxation, however, charges for these services must be disaggregated and separately stated. Furthermore, charges for services that are provided for the purposes of transmission are subject to the tax, even if the form, content, code or protocol of the information is acted upon in the course of providing the services. Thus, for example, charges for the service commonly referred to as "Voice Over Internet Protocol" (or "VOIP") are subject to the tax.

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, then 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 section, 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, then the ISP is considered a telecommunications retailer and incurs telecommunications tax on

the charges made for the 1-800 service. If the charges are not disaggregated as provided in subsection (c), then all charges are subject to the telecommunications tax.

7. Advertising Revenue

Gross charges do not include advertising revenue either from directory sales (such as “yellow pages”) or from message additions to telecommunications. For example, revenues from an advertising message preceding a time/weather call are not included in gross charges.

8. Certain Services Included in Gross Charges

Gross charges include, but are not limited to, charges for unlisted or unpublished numbers, operator assistance, directory information, call-waiting, call-forwarding, burglar alarm services and answering services provided by telecommunications retailers.

9. “900” Numbers

The Chicago Simplified Telecommunications Tax applies to telephone calls made to 900 numbers if the caller is located in Chicago and receives a billing at the caller’s service address. The telecommunications retailer, however, is required to collect the tax only upon the line charge. The invoice to the caller for a 900 number call need not separately state the line charge and tax. For example, a call to a 900 code number is made to register an opinion in a poll. The caller is billed \$1.00. The \$0.80 transmission charge is retained by the telecommunications retailer, and \$0.20 is given to the poll tabulator. \$0.80 is included in gross charges.

10. Information and Entertainment Services

Gross charges include the transmission charges for information or entertainment services such as time/weather, gab line/party line and other public announcement services. However, charges for the message content or information of these services are not included in gross charges.

11 . Persons Selling to Retailer’s Customers

a. If a telecommunications retailer receives billing and collection fees from persons selling services or products to the retailer’s customers, and these fees are billed and collected by the telecommunications retailer, the fees are not included in gross charges. For example, a call to a 900 code number is billed by the telecommunications retailer as follows:

\$25.00 - purchase price charged to caller for product or service

\$ 0.35 - call charge (\$0.20 call, \$0.15 billing and collection fee).

Only the \$0.20 charged for the telephone call is included in gross charges and subject to the tax.

b. The following fees also are not included in gross charges: (i) billing and collection fees paid by persons selling services or products directly to a telecommunications retailer's customers; and (ii) billing and collection fees paid by a telecommunications retailer to a credit card company whose holders have charged calls.

12. Other Taxes

Gross charges do not include the taxes imposed by the Chicago Simplified Telecommunications Tax Ordinance, the Illinois Telecommunications Excise Tax Act, section 4251 of the Internal Revenue Code, or the charges imposed on consumers for 911 service. (M.C.C., 3-73-020(F) (1).)

13. Exemption for State Governments and Universities

The exemption for state governments and state universities created by statute extends only to telecommunications they purchase for their own use. (M.C.C., 3-73 - 020(N)(1).) They are not exempt from the obligation to collect and remit tax on sales of telecommunications to others when they act as retailers of telecommunications. For example, a state university is exempt from the Chicago Simplified Telecommunications Tax on purchases, by the university, of telecommunications for use by its faculty and staff in the course of their duties. However, the university is required to collect and remit tax on sales of telecommunications to students in university dormitories.

14. Retailers and Resellers of Telecommunications

a. Retailers of telecommunications are persons who engage in the business of making sales of telecommunications at retail. (M.C.C., 3-73-020(L), (N).) Telecommunications retailers include, but are not limited to, persons that operate or provide radio repeater services, paging services, radio dispatch services, facsimile transmission services and party line services.

b. Resellers of telecommunications are considered telecommunications retailers and, therefore, are required to collect and remit the Chicago Simplified Telecommunications Tax based upon the gross charges they receive for telecommunications. In the event that a retailer who resells telecommunications has paid the tax to a local exchange carrier or other retailer, the reseller may make an application (including supporting documentation) to the department for a credit memorandum. Telecommunications resellers include, but are not limited to, universities and hotels.

15. Mobile Operations Reporting Option

a. Retailers of telecommunications who provide cellular phone, mobile radio, paging or other services, where the customer's service address is in fact not a fixed site but rather a motor vehicle or other mobile location, shall use the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act, Public Law 106-252, as amended from time to time, which as of January 1, 2003 provides that the "place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, and which further provides that this means the residential street address or the primary business street address of the customer within the licensed service area of the home service provider. For air-to-ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent. (M.C.C., 3-73--020(O).)

b. Retailers should not apportion gross charges based upon the physical location of a mobile portable telecommunications device at the time service is provided. For example, a retailer providing service to a place of primary use in Chicago must collect Chicago Simplified Telecommunications Tax on all telecommunications billed to the customer.

16. Interstate and International Telecommunications

Interstate telecommunications means all telecommunications that either originate or terminate outside Illinois. This term includes telecommunications that originate or terminate outside the United States of America. Consumers paying a foreign tax on telecommunications may file a claim for credit with the department of revenue in the same manner as with taxes paid to other municipalities. (M.C.C., 3-73-020(G); M.C.C., 3-73-030(B).)

17. Responsibility for Accounting and Payment of Tax

a. Obligation of agents. If a local exchange carrier acting as an agent of a long distance carrier, inter-exchange carrier, alternative operator service or billing and collections contractor (a) bills local customers for long distance service, local service and the taxes applicable for those services and (b) remits a portion of the collections to its principal, then the local exchange carrier or retailer must remit tax to the department of revenue only for the amounts it retains. The local exchange carrier or retailer is required to maintain billing and accounting data and to provide the data to the department of revenue upon request.

b. Obligation of principals. Principals are responsible for remitting the Chicago Simplified Telecommunications Tax on all amounts paid over to them by their agents. Long distance carriers, inter-exchange carriers and other retailers who retain local exchange carriers or other agents in Illinois to bill and collect gross charges from Chicago customers are considered to be retailers

maintaining a place of business in this state. Thus, they are required to register with the department and file returns.

c. Collection fee. The 1.0% commission authorized by M.C.C., 3-73-040(D) may be claimed only by the retailer filing a return with the department of revenue, not by the billing agent, unless the agent also files a remittance return on behalf of the retailer and remits the applicable tax.

18. Bad Debts

Gross charges do not include bad debts. However, if any portion of a debt deemed to be bad is subsequently paid, the telecommunications retailer must report and pay the tax on that portion of the debt paid during the reporting period. (M.C.C., 3-73-020(F)(7).) For purposes of this provision, the term “bad debt” means any portion of a debt that is related to a sale at retail, for which gross charges are not otherwise deductible or excludable, that has become worthless or uncollectible as determined by relevant federal income tax standards. (M.C.C., 3-73-020(F).)

19. Credits

A consumer who has paid both the Chicago Simplified Telecommunications Tax and a similar tax imposed by another municipality on the same transmission may file a claim for credit with the department of revenue. The claim must be accompanied by documentation showing the taxes charged to the taxpayer and relating the taxes to the specific call or transaction. A credit may be available in Chicago to the extent of the tax imposed by the other municipality, if actually paid, but not exceeding the Chicago Simplified Telecommunications Tax paid. (M.C.C., 3-73-030(B).)

20. Application of State Rulings and Regulations

Published rulings and regulations promulgated under the Illinois Telecommunications Excise Tax Act (35 ILCS 630/1 et seq.) apply to the Chicago Simplified Telecommunications Tax unless (1) a state ruling or regulation relates to a provision of the Illinois Telecommunications Excise Tax Act that differs in substance from the Chicago Simplified Telecommunications Tax Ordinance or (2) the city’s department of revenue has promulgated a ruling or regulation relating to the same subject.

21. Federal Regulatory Classifications

In the absence of a statute or judicial decision expressly and clearly providing otherwise, the regulatory classification of a service shall not be controlling as to the treatment of the service under the Chicago Simplified Telecommunications Tax Ordinance, and the terms of the Ordinance and these regulations shall control instead.