

6. Petitioner can provide communications equipment known as Customer Premises Equipment (“CPE”) when requested by Customer. CPE is installed at Customer's premise and remains the property of Petitioner.

ERRORS ALLEGED

COUNT I – The Department Erred in Proposing to Assess Telecommunications Infrastructure Maintenance Fee on sales of telecommunications to a telecommunications service provider

7. The Department proposes assessing Petitioner with Illinois Telecommunications Infrastructure Maintenance Fee on sales of telecommunications to telecommunications service providers for use as a component part of the service provided to the ultimate retail consumer.
8. In section 635-10, the Telecommunications Infrastructure Maintenance Fee Act provides the following definition of the term “telecommunications”:

[M]essages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, 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. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall 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. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following) as now or hereafter amended or through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended. Beginning January 1, 2001, prepaid telephone calling arrangements shall not be considered "telecommunications" subject to the tax imposed under this Act. For purposes of this Section, "prepaid telephone calling arrangements" means that term as defined in Section 2-27 of the Retailers' Occupation Tax Act.

35 ILCS 635/10.

9. As a result of this definition, Petitioner's sales to telecommunications service providers are specifically excluded from telecommunications subject to the Telecommunications Infrastructure Maintenance Fee.
10. Petitioner has obtained, and made available to the Department, documentation, supporting tax-free sales of telecommunications to telecommunications providers.
11. Under 35 ILCS 635/10, Petitioner's sales of telecommunications services to telecommunications providers are not subject to Telecommunications Infrastructure Maintenance Fee.
12. The Department erred in concluding to the contrary.

WHEREFORE, Petitioner respectfully requests that this Tribunal enter an order:

- (a) Finding that the Petitioner is not subject to Telecommunications Infrastructure Maintenance Fee on sales of telecommunications services to telecommunications providers; and
- (b) Directing that the Notice be modified or withdrawn accordingly.

**COUNT II – The Department Erred in Proposing to Assess
Telecommunications Infrastructure Maintenance Fee on sales of services not
included as telecommunications services**

13. In section 635-15, the Telecommunications Infrastructure Maintenance Fee Act imposes a fee as follows:
 - a. A State infrastructure maintenance fee is hereby imposed upon telecommunications retailers as a replacement for the personal property tax in an amount specified in subsection (b).
 - b. The amount of the State infrastructure maintenance fee imposed upon a telecommunications retailer under this Section shall be equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State. However, the State infrastructure maintenance fee is not imposed in any case in which the imposition of the fee would violate the Constitution or statutes of the United States.

35 ILCS 635/15.

In section 635-10, the Telecommunications Infrastructure Maintenance Fee Act provides the following definition of the term "telecommunications":

[M]essages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, 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. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall 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. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following) as now or hereafter amended or through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended. Beginning January 1, 2001, prepaid telephone calling arrangements shall not be considered "telecommunications" subject to the tax imposed under this Act. For purposes of this Section, "prepaid telephone calling arrangements" means that term as defined in Section 2-27 of the Retailers' Occupation Tax Act.

35 ILCS 635/10.

14. Petitioner is a provider of multiple services that do not meet the definition of telecommunications as defined in 35 ILCS 635/15, such as Internet access service and conference calling services.
15. Under 35 ILCS 635/15 and 35 ILCS 635/10 Petitioners sales of services that do not meet the definition of telecommunications are not subject to Telecommunications Infrastructure Maintenance Fee.
16. The Department erred in concluding the contrary.

WHEREFORE, Petitioner respectfully requests that this Tribunal enter an order:

- (a) Finding that the Petitioner is not subject to Telecommunications Infrastructure Maintenance Fee on sales of services not meeting the definition of the term telecommunications and
- (b) Directing that the Notice be modified or withdrawn accordingly.

**COUNT III – The Department Erred in Proposing to Assess
Telecommunications Infrastructure Maintenance Fee on revenue reported in a
separate monthly period**

17. In section 635-27, the Telecommunications Infrastructure Maintenance Fee Act prescribes the elements of monthly tax returns for reporting Telecommunications Infrastructure Maintenance Fee as follows:

[E]ach telecommunications retailer maintaining a place of business in this State shall make a return and payment of fees to the Department for the preceding calendar month on a form prescribed and furnished by the Department. The return shall be signed by the telecommunications retailer under penalties of perjury and shall contain the following information: Retailer's name.

1. His or her name;
2. The address of his or her principal place of business, or the address of the principal place of business (if that is a different address) from which he or she engages in the business of transmitting telecommunications;
3. The total amount of gross charges charged by him or her during the preceding calendar month for providing telecommunications during such calendar month;
4. The total amount received by him or her during the preceding calendar month on credit extended;
5. Deductions allowed by law;
6. Gross charges that were charged by him or her during the preceding calendar month and upon the basis of which the State infrastructure maintenance fee is imposed;
7. (Blank);
8. Amounts of fees due;
9. Such other reasonable information as the Department may require.

35 ILCS 635/27.

18. Petitioner, through its reporting and tax compliance process, periodically issued credits to Illinois telecommunications customers. Frequently, the value of the credits issued exceeded the value of calculated fees.
19. The Department does not permit taxpayers to report a credit balance on any monthly return.
20. As a means of complying with the Department's restriction on reporting credit balances on monthly returns, Petitioner withheld the reporting of credit amounts until the Telecommunications Infrastructure Maintenance Fee liability for a subsequent reporting period could fully offset the withheld credit balance.
21. The Department erred in concluding that the Petitioner incorrectly reported Telecommunications Infrastructure Maintenance Fee on its monthly returns.

WHEREFORE, Petitioner respectfully requests that this Tribunal enter an order:

- (a) Finding that the Petitioner reasonably reported Telecommunications Infrastructure Maintenance Fee within the confines of the Department's reporting requirements and
- (b) Directing that the Notice be modified or withdrawn accordingly.

COUNT IV – The Department Erred in Proposing to Assess Late Payment Penalties

- 22. The Notice proposes late payment penalties for the periods at issue.
- 23. Petitioner reasonably believed it maintained appropriate documentation supporting fee-free sales to telecommunications providers.
- 24. Petitioner reasonably believed its sales of services did not meet the definition of telecommunications subject to the Telecommunications Infrastructure Maintenance Fee. Petitioner did not seek to avoid paying taxes and reported Telecommunications Infrastructure Maintenance Fee on most sales.
- 25. No penalty imposed under the Uniform Penalty and Interest Act shall apply if the failure to file a return or pay the tax at the required time is due to reasonable cause. 35 ILCS 735/3-8; 86 Ill. Admin. Code Section 700.400. The most important factor in determining whether there is reasonable cause is the extent to which the taxpayer made a good faith effort to determine the proper tax liability and to file returns and pay the proper tax liability in a timely fashion. *Id.* A taxpayer makes a good faith effort to determine the proper tax and timely pay the proper amount if the taxpayer exercised ordinary business care and prudence in doing so. *Id.* Petitioner exercised ordinary business care and prudence in determining its Telecommunications Infrastructure Maintenance Fee liability for the periods at issue.

WHEREFORE, Petitioner respectfully requests that this Tribunal enter an order:

- (a) Finding that Petitioner had reasonable cause for its nonpayment of Telecommunications Infrastructure Maintenance Fee at issue; and
- (b) Directing that the Notice be modified or withdrawn accordingly.

RELIEF REQUESTED

Petitioner respectfully requests modification or reversal of the Notice in accordance with the errors alleged.

Dated: March 17, 2020

McLeodUSA Telecommunications Services, LLC

By: Brian Browdy T.M.

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Petitioner's Representative

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2020, a copy of the foregoing Petition was sent via U.S. mail, postage prepaid, to the Independent Tax Tribunal and Department of Revenue at the addresses below:

Illinois Independent Tax Tribunal
160 N. LaSalle Street, Room N506
Chicago, Illinois 60601

-and-

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., Level 7-900
Chicago, Illinois 60601

Brian Browdy T.M.
Brian L. Browdy

Notice of Tax Liability



February 25, 2020



#BWNKMGV
#CNXX X1X3 9X37 1681#
MC LEOD USA TELECOMMUNICATIONS SERVICE
ATTN: TRANSACTION TAX
4001 N RODNEY PARHAM RD
LITTLE ROCK AR 72212-2459

Letter ID: CNXXX1X39X371681
Account ID: 40407586
License No: TI-02499
Reporting period: March 31, 2015

We have audited your Telecom Infrastruct. Maint Fee account for the reporting periods January 01, 2013, through March 31, 2015, and the liability has been processed on Form RT-10-A, Telecommunications Infrastructure Maintenance Fee (TIMF) Audit Return. As a result, we have assessed the amounts shown below.

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

If you do not agree, you may protest this notice within specific time periods. See the "Protest Rights" section on the following page of this notice for additional information and instructions.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action to satisfy your liability.

Note: If you are under bankruptcy protection, see the "Bankruptcy Information" section on the following pages of this notice for additional information and instructions.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	135,852.00	0.00	135,852.00
Late Payment Penalty	27,170.00	0.00	27,170.00
Late Filing Penalty Increase	90.00	0.00	90.00
Interest	31,206.56	0.00	31,206.56
Assessment Total	\$194,318.56	\$0.00	\$194,318.56

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

**AUDIT BUREAU
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012**

217 785-6579

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by a filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1, *et seq.*

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy case number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns. For those under bankruptcy protection this notice is not an attempt to collect tax debt. Illinois law requires issuance of this notice to advise you of an amount due or a missing return that must be filed.

Explanation of Penalties and Fees

For more detailed information, see Publication 103, Penalties and Interest for Illinois taxes.

Are penalties ever abated?

If you were unable to either timely pay the required amount of payments, pay the tax you owe by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. A bad check or negligence penalty may also be waived due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations. A fraud penalty or cost of collection fee cannot be waived.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax. Interest cannot be waived.

Late-filing or Nonfiling penalty - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.

Late-payment penalty for underpayment of estimated or accelerated tax due - You owe this penalty if you were required to make estimated or accelerated tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.

Late-payment penalty for regular tax payments - You owe this penalty if you did not pay the tax you owed by the due date of the payment or the original due date of the return.

Cost of collection fee - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.

Bad check penalty - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.

Negligence penalty - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.

Fraud penalty - You owe this penalty if any part of a deficiency is due to fraud.

Audit penalty - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

Protest Rights

If you do not agree, you may protest this notice by following the instructions listed below.

If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability is assessed but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).

In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is April 27, 2020. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.illinois.gov). Mail Form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.

Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.