

- 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 Excise Tax on sales of telecommunications to a telecommunications service provider

- The Department proposes assessing Petitioner with Illinois Telecommunications Excise Tax on sales of telecommunications to telecommunications service providers for use as a component part of the service provided to the ultimate retail consumer.
- In section 630-2, the Telecommunications Excise Tax Act provides the following definition of the term “telecommunications”:

[W]ithout 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. As used in this Act, "private line" means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of "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 purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale.

35 ILCS 630/2.

- As a result of this definition, Petitioner’s sales to telecommunications service providers are specifically excluded from telecommunications subject to the Telecommunications Excise Tax.

10. In section 630-8 the Telecommunications Excise Tax Act provides the following regarding the certification of a reseller of telecommunications:

If a person who originates or receives telecommunications in this State claims to be a reseller of such telecommunications, such person shall apply to the Department for a resale number. Such applicant shall state facts which will show the Department why such applicant is not liable for tax under this Article on any of his purchases and shall furnish such additional information as the Department may reasonably require.

Upon approval of the application, the Department shall assign a resale number to the applicant and shall certify such number to him. The Department may cancel any such number which is obtained through misrepresentation, or which is used to originate or receive such telecommunications tax-free when such actions in fact are not for resale, or which no longer applies because of the person's having discontinued the making of resales.

Except as provided hereinabove in this Section, 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.

11. Petitioner has obtained, and made available to the Department, documentation, supporting tax-free sales of telecommunications to telecommunications providers with an active resale number.
12. Under 35 ILCS 630/2 and 35 ILCS 630/8, Petitioner's sales of telecommunications services to telecommunications providers are not subject to Telecommunications Excise Tax when supported by an active resale number.
13. 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 Excise Tax on sales of telecommunications services to telecommunications providers when supported by an active resale number; and
- (b) Directing that the Notice be modified or withdrawn accordingly.

COUNT II – The Department Erred in Proposing to Assess Telecommunications Excise Tax on sales of services not included as telecommunications services

14. In section 630-3, the Telecommunications Excise Tax Act imposes an excise tax as follows:

Until December 31, 1997, a tax is imposed upon the act or privilege of originating or receiving intrastate telecommunications by a person in this State at the rate of 5% of the gross charge for such telecommunications purchased at retail from a retailer by such person. Beginning January 1, 1998, a tax is imposed upon the act or privilege of originating in this State or receiving in this State intrastate telecommunications by a person in this State at the rate of 7% of the gross charge for such telecommunications purchased at retail from a retailer by such person. However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the State. Beginning January 1, 2001, prepaid telephone calling arrangements shall not be considered telecommunications subject to the tax imposed under this Act.

35 ILCS 630/3.

15. In section 630-4, the Telecommunications Excise Tax Act imposes an excise tax as follows:

Until December 31, 1997, a tax is imposed upon the act or privilege of originating in this State or receiving in this State interstate telecommunications by a person in this State at the rate of 5% of the gross charge for such telecommunications purchased at retail from a retailer by such person. Beginning January 1, 1998, a tax is imposed upon the act or privilege of originating in this State or receiving in this State interstate telecommunications by a person in this State at the rate of 7% of the gross charge for such telecommunications purchased at retail from a retailer by such person. To prevent actual multi-state taxation of the act or privilege that is subject to taxation under this paragraph, any taxpayer, upon proof that that taxpayer has paid a tax in another state on such event, shall be allowed a credit against the tax imposed in this Section 4 to the extent of the amount of such tax properly due and paid in such other state. However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the State. Beginning on January 1, 2001, prepaid telephone calling arrangements shall not be considered telecommunications subject to the tax imposed under this Act.

35 ILCS 630/4.

16. In section 630-2, the Telecommunications Excise Tax Act provides the following definition of the term "telecommunications":

...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. As used in this Act, "private line" means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of "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 purchases of telecommunications by a telecommunications service provider for

use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale.

35 ILCS 630/2.

17. Petitioner is a provider of multiple services that do not meet the definition of telecommunications as defined in 35 ILCS 630/2, such as Internet access service and conference calling services.
18. Under 35 ILCS 630/3 and 35 ILCS 630/4 Petitioners sales of services that do not meet the definition of telecommunications are not subject to Telecommunications Excise Tax.
19. 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 Excise tax 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 Excise Tax on revenue reported in a separate monthly
period**

20. Under Title 86 Ill. Admin. Code Section 495.135, the Department prescribes the elements of monthly tax returns for reporting Telecommunications Excise Tax as follows:

[E]ach retailer maintaining a place of business in this State shall make a return to the Department for the preceding calendar month, stating the following:

- 1) Retailer's name.
- 2) The address of the principal place of business, and the address of the principal place of business (if that is a different address) from which the retailer engages in the business of transmitting telecommunications.
- 3) Total amount of gross charges billed by the retailer during the preceding calendar month for providing telecommunications during such calendar month.
- 4) Total amount received by the retailer during the preceding calendar month on credit extended.
- 5) Deductions allowed by law.
- 6) Gross charges billed by the retailer during the preceding calendar month and upon the basis of which the tax is imposed.

- 7) Amount of tax (computed upon Item 6).
21. 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 tax for local Illinois jurisdictions.
 22. The Department does not permit taxpayers to report a credit balance on any monthly tax return for any local tax jurisdiction.
 23. As a means of complying with the Department's restriction on reporting credit balances on monthly tax returns, Petitioner withheld the reporting of credit amounts until the Telecommunications Excise Tax liability for a subsequent reporting period could fully offset the withheld credit balance.
 24. The Department erred in concluding that the Petitioner incorrectly reported local Telecommunications Excise Tax on its monthly tax returns.

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

- (a) Finding that the Petitioner reasonably reported local Telecommunications Excise Tax within the confines of the Department's reporting requirements; and
- (b) Directing that the Notices be modified or withdrawn accordingly.

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

25. The Notice proposes late payment penalties for the periods at issue.
26. Petitioner reasonably believed it maintained appropriate documentation supporting tax-free sales to telecommunications providers.
27. Petitioner reasonably believed its sales of services did not meet the definition of telecommunications subject to the Telecommunications Excise Tax. Petitioner did not seek to avoid paying taxes and reported Telecommunications Excise Tax on most sales.
28. 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 Excise Tax 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 Excise Tax 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

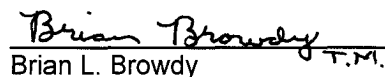
CERTIFICATE OF SERVICE

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 L. Browdy T.M.

Notice of Tax Liability



February 25, 2020



#BWNKMGV
#CNXX X211 5442 8968#
MC LEOD USA TELECOMMUNICATIONS SERVICE
ATTN: TRANSACTION TAX
4001 N RODNEY PARHAM RD
LITTLE ROCK AR 72212-2459

Letter ID: CNXXX21154428968
Account ID: 40407594
License No: T-02499
Reporting period: March 31, 2015

We have audited your Telecommunications Excise Tax account for the reporting periods January 01, 2013, through March 31, 2015, and the liability has been processed on Form RT-2-A, Telecommunications Tax 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	3,424,586.00	0.00	3,424,586.00
Late Payment Penalty	914,517.00	0.00	914,517.00
Interest	785,951.48	0.00	785,951.48
Assessment Total	\$5,125,054.48	\$0.00	\$5,125,054.48

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