

TELECOMMUNICATIONS USED BY INTERNET SERVICE PROVIDERS

Notice #07-21

Sales and Use Tax

December 2007



Highlights

- *Telecom services used by an ISP to provide Internet access are exempt from sales tax*
- *DSL used to provide Internet access is exempt from sales tax*
- *Amended definition of "Internet access service" in the Internet Tax Freedom Act Amendments Act of 2007*

INTRODUCTION

This notice is intended to provide taxpayers and the general public with information concerning the application of Tennessee sales tax to telecommunications purchased, used, or sold by an Internet Service Provider (ISP).

DISCUSSION

The Internet Tax Nondiscrimination Act (ITNA) expanded the moratorium on state taxation of Internet access by including telecommunication services that are purchased, used, or sold by an ISP to provide Internet access. Accordingly, telecommunication services purchased or used by an ISP to provide Internet access are exempt from Tennessee sales tax. Also, telecommunication services such as Digital Subscriber Line services (DSL) sold by an ISP to provide Internet access are exempt from sales tax.

In 2007 the definition of Internet access was amended and the moratorium on state taxation of Internet access was extended to November 1, 2014.

The term "Internet access service"

- (A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;
- (B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold --
 - (i) to provide such service; or
 - (ii) to otherwise enable users to access content, information, or other services offered over the Internet;
- (C) includes services that are incidental to the provision of the services described in subparagraph (A) when furnished to users as part of such service, such as home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;
- (D) does not include voice, audio or video programming, or other products and services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and
- (E) includes homepage, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access.

To document exempt sales of telecommunication services to an ISP, telecommunication companies should obtain a signed statement from the ISP that the telecommunication services are used to provide Internet access.

➤ *Other telecom services continue to be subject to sales tax*

Services remaining subject to sales and use tax:

1. Telecommunication services such as telephone services, cellular services, paging services, and facsimile services that are not used to provide access to the Internet remain subject to sales tax when purchased, used, or sold by an ISP.
2. Voice over Internet Protocol (VoIP) and similar services that utilize Internet protocol are excluded from the amended definition of Internet access and continue to be subject to sales tax as a telecommunications service. See Sales and Use Tax Notice #05-20.

➤ *VOIP continues to be subject to sales tax*

➤ *Important date – November 1, 2005*

Under the ITNA, states imposing sales tax on telecommunication services prior to November 1, 2003, may continue to tax telecommunication services that are purchased, used, or sold by an ISP to provide Internet access until November 1, 2005. Instructions for claiming a refund for taxes billed on or after November 1, 2005, are included below.

INSTRUCTIONS FOR CLAIMING A REFUND

➤ *Refund Procedures*

Telecommunication companies who wish to claim a refund of sales tax collected and remitted to the department on telecommunication services purchased by an ISP to provide Internet access must use the following procedure:

➤ *Collected taxes must be refunded to the customer*

- Claims for refund must be filed within three years from December 31 of the year in which the tax was remitted to the department.
- In order to claim the refund, taxpayers are required to refund or credit the collected tax to the ISP. When submitting the claim, the taxpayer must include documentation that the ISPs have received a refund or credit for the sales taxes paid to the taxpayer.
- Sales taxes billed before November 1, 2005, are not refundable.
- Taxpayers must submit copies of statements from ISPs documenting that the telecommunication services were used to provide access to the Internet.

➤ *Applies to taxes billed on or after 11/1/2005*

➤ *3-year statute of limitations*

ISPs who wish to claim a refund of sales tax collected from their customers and remitted to the department on sales of telecommunication services to provide Internet access, such as DSL, must use the following procedure:

- Claims for refund must be filed within three years from December 31 of the year in which the tax was remitted to the department.
- In order to claim the refund, ISPs are required to refund or credit the collected tax to their retail customers. When submitting the claim, the taxpayer must include documentation that its customers have received a refund or credit for the sales taxes paid to the taxpayer.
- Sales taxes billed before November 1, 2005, are not refundable.

➤ *Documentation requirements*

Documentation submitted by telecommunication companies and ISPs in support of the claim can be in the form of a schedule, which must include the information outlined below:

- Customers' names,
- Customers' addresses,
- Customers' account numbers,
- Customer service periods including beginning and ending service dates during the refund period,
- Customers' amount of sales tax paid per year (broken down by state and local tax),
- Dates of the refund checks or credit memos to customers issued,
- Check numbers or credit memo numbers, and
- Total amount of the refund or credit actually received by each of the customers.

Companies claiming a refund will be asked by departmental personnel to provide copies of a randomly selected sample of billing invoices and/or refund checks or credit memos.



References:

T.C.A. § 67-6-102
T.C.A. § 67-1-1802
Public Law 108-435,
108th Congress
Public Law 110-108,
110th Congress

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.