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Georgia Letter Ruling SUT No. 2013-09-16-01 Communications

This letter is in response to your ruling request concerning the application of Georgia sales and use tax to your client's interconnected Voice over Internet Protocol services.

Facts

Taxpayer provides voice services in Georgia and it does so using an interconnected Voice over Internet Protocol ("VoIP") technology.

There are several different varieties of VoIP services available to consumers. These VoIP services include: (1) "peer-to-peer" VoIP services; (2) nomadic interconnected VoIP services; and (3) fixed interconnected VoIP services. A relevant discussion of each follows.

Peer-to-Peer VoIP Services

"Peer-to-peer" VoIP services permit users who have downloaded the provider's "client" software or application to communicate exclusively with each other. These services may take the form of voice-capable "chat" or instant messaging applications, or may take the form of voice-dedicated applications (no chat or instant messaging incorporated). These services are typically accessed through an Internet access service (e.g., Wi-Fi, broadband cable modem, DSL, FTTH or wireless data card service) that may or may not be supplied by the VoIP provider. These services typically do not offer customers the ability to complete calls to North American Number Plan ("NANP") telephone numbers that are assigned to users of interconnected VoIP and plain old telephone service ("POTS").

"Peer-to-peer" VoIP service providers typically do not assign customers a telephone number in the NANP format (e.g., (AAA) BBB-CCCC format representing area code ("A") exchange ("B") and line number ("C")). The nature of these VoIP services is "nomadic", meaning the user may use the software on a mobile computing device anywhere that device may be located and over any Internet connection. Typically there is no restriction on where the user can use the software, so the customer can originate calls at virtually any location where he or she can access the Internet. Federal law does not require "peer-to-peer" VoIP services to offer 911 emergency dialing or telecommunications relay services ("TRS", i.e.,

“711” for the hearing impaired). “Peer-to-peer” VoIP services are generally not provided over a managed network maintained by the provider of the service leaving it unable to monitor and ensure call quality (quality of service); instead, these services are delivered over the public Internet and therefore may be subject to degradation of quality of the voice communication. “Peer-to-peer” VoIP services have been classified by the Federal Communications Commission (“FCC”) as information services.

Some providers of “peer-to-peer” VoIP also offer additional VoIP services, which allow calls to telephone numbers on the public switched telephone network (“PSTN”). These services typically do not assign NANP telephone numbers to the VoIP customers. Normally, these services are also nomadic in nature, like (non-interconnected) “peer-to-peer” VoIP services, allowing the customer to originate calls from any location where they obtain an Internet connection. 911 emergency services and TRS services are typically not offered by “peer-to-peer” VoIP providers.

Nomadic Interconnected VoIP Service

Nomadic Interconnected VoIP service providers offer services that are often considered a replacement for traditional landline telephone service. Customers are assigned NANP telephone numbers and may make calls to (or receive calls from) the PSTN using either a software application or a VoIP adapter device (customer premises equipment). Like “peer-to-peer” services, nomadic interconnected VoIP services are generally not provided over a privately managed network maintained by the provider of the services; instead, these services are delivered over the public Internet and therefore may be subject to degradation of quality in the voice communication. This type of VoIP service can be accessed from any broadband connection and the physical location of the customer need not remain fixed (hence the “nomadic” label). 911 emergency services must be provided to users. However, providers may place the onus on the customer to notify the provider of the customer’s “new” location should the customer use the service (and any devices) at a location different from that which was originally or previously registered with the provider. Likewise, 711 access must be provided.

Fixed Interconnected VoIP Service

Lastly, fixed interconnected VoIP service providers also offer services that are considered a replacement for traditional landline telephone service. Customers are assigned NANP telephone numbers and may make calls to (or receive calls from) the PSTN using a VoIP adapter device (customer premises equipment). However, fixed interconnected VoIP service typically can only be accessed or utilized from a non-portable location; the service is not “nomadic” in nature. These VoIP services are generally provided over a managed network maintained by the provider of the service to ensure call quality (quality of service). These services are typically not delivered over the public Internet; rather, they are provided over a privately managed network (and therefore, are less prone to degradation of quality in the voice communication). Federal law or FCC orders require that 911 and TRS services are provided to customers, but customers are often contractually required to use the service from a fixed location so that 911 service is not compromised. In other words, 911 service specifically, and regular calling generally, may not function properly if the service is used from a location other than that established in service provider systems at the time service is installed.

Taxpayer's VoIP Service

Taxpayer's voice service is a fixed interconnected VoIP service. Taxpayer's customers have full ability to make and receive calls to and from NANP telephone numbers on the PSTN and to access emergency 911 and TRS services. Taxpayer's interconnected VoIP service is provided over a privately-managed network maintained by Taxpayer and other affiliates of the Company. Unlike typical peer-to-peer or nomadic interconnected VoIP providers that route calls over the "public" Internet, calls from Taxpayer's customers traverse Taxpayer's privately-managed network and do not traverse the public Internet.

Internet access service from the Company is not required to use Taxpayer's VoIP service, but compatible customer premises equipment, known as an embedded Multimedia Terminal Adapter (eMTA) is required. The eMTA is provided to Taxpayer's customers at no additional charge and cannot be purchased from a consumer electronics vendor. To utilize Taxpayer's VoIP services, customers connect their inside wiring (or directly connect their handset) to the eMTA. The eMTA formats outgoing calls from an analog signal into Internet protocol, and formats incoming calls from Internet protocol into an analog electrical signal for the handset.

Calls to another Taxpayer customer may remain wholly on the Taxpayer network. Calls to a customer on the PSTN are converted to a format that is compatible for hand off to an interconnecting carrier on the PSTN, as further described below. Calls to other VoIP customers may transit through the PSTN, or may be handed off in Internet protocol to a directly interconnected VoIP provider. Calls from Taxpayer's customers are initiated as analog signals which are then converted, and enter Taxpayer's network, in Internet protocol. Calls to Taxpayer's customers are converted from internet protocol to analog. Taxpayer customers also have the ability to make calls to other VoIP customers, and some of those calls stay IP all the way.

Traditional landline telephone service providers (utilizing the PSTN) interconnect and carry calls in a protocol called Time Division Multiplexing ("TDM"). Therefore, to allow Taxpayer customers to place and receive calls to and from PSTN users, Taxpayer's network converts both outgoing and incoming calls from the PSTN, accepting calls in TDM at the interconnection point and converting the calls using Taxpayer hardware and software to Internet protocol for delivery to Taxpayer VoIP customers.

Taxpayer's VoIP customers are not able to move their service equipment to another location outside of a limited area. Prior to receiving service, Taxpayer's customers are required to acknowledge this restriction either in writing or verbally as recorded by an independent third party vendor. Based upon the fixed service location of its VoIP customers, Taxpayer is able to determine the origin of its customers' VoIP calls and the service address from which its customers originate calls.

In sum, the relevant aspects of Taxpayer's VoIP service are as follows:

- Taxpayer's VoIP service can exchange traffic with the PSTN;
- Taxpayer's VoIP service is not nomadic, either technically or by customer terms of service; thus Taxpayer can identify the location of the origination/termination of a Taxpayer customer's phone call;
- Taxpayer situates all emergency 911 and TRS services and fees associated with its VoIP services to the fixed service location;
- Taxpayer's VoIP service does not require Internet access at the origination or termination point to access the service;

- Taxpayer's VoIP service is comparable in quality and reliability to traditional landline telephone service.

Issue

Is Taxpayer's sale of fixed interconnected VoIP service subject to Georgia sales and use tax?

Analysis

In Georgia, sales tax is imposed on the retail sale, rental storage, use, or consumption of tangible personal property and on certain enumerated services.¹ A taxable Georgia retail sale includes "the sale of . . . local telephone services . . . when made to any purchaser for purposes other than resale."² O.C.G.A. § 48-8-2(31) further defines taxable "retail sale" to include:

(F) Charges, which applied to sales of telephone service, made for local exchange telephone service, except coin operated telephone service, except as otherwise provided in subparagraph (G) of this paragraph;

(G) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider's books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.³

Ga. Comp. R. & Regs. r. 560-12-2-.24 provides that sales tax applies to charges made for local exchange telephone services, for cellular telephone services, and for the amount of guaranteed charges for semi-public coin-box telephone services; sales tax does not apply to any communication service not specifically listed.⁴

O.C.G.A. § 46-5-222(a) restricts Georgia from imposing "any requirement or regulation relating to the setting of rates or terms and conditions for the offering of broadband service, VoIP, or wireless service."⁵ This statute does not independently eliminate the State's ability to tax sales of VoIP service. Instead, this statute merely limits Georgia's ability to shape or control the substantive rates or terms of service offered by VoIP providers. However, the sales tax statutes and regulations cited above only provide that local exchange telephone service is subject to the Georgia sales and use tax. VoIP service is not local exchange telephone service as contemplated under O.C.G.A. § 48-8-2(31).

¹ O.C.G.A. § 48-8-30(a).

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-2(31).

⁴ Ga. Comp. R. & Regs. r. 560-12-2-.24.

⁵ O.C.G.A. § 46-5-222(a).

Ruling

Georgia sales tax does not apply to the sale of interconnected VoIP technology services (described above) provided by Taxpayer. All calls made or received through Taxpayer's VoIP services route through a private internet network prior to delivery or receipt. Moreover, VoIP is not local exchange service because its communications protocol is initiated through the internet prior to delivery to or receipt from the PSTN. As a result, the service provided is not subject to Georgia sales tax under O.C.G.A. § 48-8-2(31), Ga. Comp. R. & Regs. r. 560-12-2-.24, or Ga. Comp. R. & Regs. r. 560-12-2-.76.

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions in question. Should the circumstances regarding the transactions change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that subsequent statutory or administrative rule changes or judicial interpretations of the Statutes or Rules upon which this advice is based may subject similar future transactions to a different tax treatment than those expressed in this response.