

Date Issued: September 23, 2014
Georgia Letter Ruling: LR SUT-2014-13
Topic: Service Provider-Internet Access

This letter is in response to your request for guidance on the application of Georgia sales and use tax to certain purchases and sales by Taxpayer in the event that Congress does not timely renew the Internet Tax Freedom Act (“ITFA”).

Facts as Presented by Taxpayer

Taxpayer provides Internet access services using cable modem technology on the same physical plant and rights of way over which Taxpayer provides its cable television (video) services. Taxpayer’s cable modem Internet access services can be provided to customers as part of a bundled package.

Taxpayer’s Internet access service, in whole or in part, is not regulated as “telecommunications” by the Federal Communications Commission. Unlike current DSL or dial up offerings—where a customer can purchase regulated DSL or a phone line from their telephone company (so called “last mile transport”) and separately purchase Internet access from a third-party Internet service provider—Taxpayer does not separately offer “last mile transport” or Internet access.

Taxpayer records cable modem Internet access revenue as a single item on its books and records. Taxpayer offers cable modem Internet access services at a variety of price points, with the differing prices substantially attributable to varying upload and download speeds provided to the subscriber. Taxpayer treats all of its cable modem Internet access offerings (regardless of price point) as “Internet access” as defined by ITFA. Equipment charges (e.g., cable modem and/or Wi-Fi router rental fees) are recorded separate and apart from Internet access revenue and appropriate tax imposed. Taxpayer does not apply the ITFA moratorium to equipment charges.

Issues

1. Will Taxpayer’s cable modem Internet access services charges to its subscribers remain nontaxable in the event that Congress does not timely renew the ITFA?
 - a. Will such charges remain nontaxable for all varying price points/bandwidth speeds?
 - b. Assuming Taxpayer will separately record Internet access service charges on its books and records, will Taxpayer’s cable modem Internet access services charges to its subscribers remain nontaxable regardless of whether Taxpayer includes its cable modem Internet access services with other services and products for a single non-itemized charge?
2. Will telecommunications purchased and consumed by Taxpayer to provide Internet transmission (“backbone”) services remain nontaxable for sales tax purposes in Georgia until such time Georgia provides prospective statutory or regulatory guidance?

Analysis

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

¹ O.C.G.A. § 48-8-2(31)(A).

(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.

Ga. Comp. R. & Regs. r. 560-12-2-.24 provides guidance with respect to which telecommunication services are subject to tax and which are not. Specifically, sales tax applies to charges made for local exchange telephone services, cellular telephone services, and the amount of guaranteed charges for semi-public coin-box telephone services. The tax does not apply to any communication service not specifically listed. Because Internet access is not specifically listed in the relevant provisions as a taxable service, charges for Internet access are not subject to the tax.

In the case at hand, Taxpayer asserts that the telecommunications services it purchases and consumes are not local telephone service. To the extent that the relevant services are not local telephone services, charges for such services are not subject to the tax. Any purchases of local telephone services would be subject to tax if ITFA expires, assuming such purchases are not for resale.

Rulings

1. Because internet access is not specifically listed in the relevant provisions as a taxable service, charges for Internet access are not subject to the tax.
 - a. Charges for Internet access remain nontaxable for all varying price points/bandwidth speeds.
 - b. Assuming Taxpayer will separately record Internet access service charges on its books and records, Taxpayer's cable modem Internet access services charges to its subscribers remain nontaxable regardless of whether Taxpayer includes its cable modem Internet access services with other services and products for a single non-itemized charge.

Note that all purchases of tangible personal property by Taxpayer for its use in providing a service are subject to sales and use tax. In addition, any retail sales (including leases) of tangible personal property by Taxpayer are subject to sales and use tax unless a specific exemption applies.

2. Taxpayer represents that any telecommunications it purchases and consumes are not "local telephone service." Based on that representation, any telecommunications purchased and consumed by Taxpayer are not subject to the tax. Should Taxpayer purchase taxable telecommunication services for purposes other than resale, such purchases are subject to the tax in the event that Congress does not timely renew the ITFA.

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, circumstances and taxpayer 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 that expressed in this response.