

This notice was modified on June 8, 2009.

Department of Revenue

Modification of Revenue Notice # 03-10: Sales and Use Tax – Telecommunications Services

Background

This revenue notice replaces Revenue Notice # 91-18, which is hereby revoked-is modified to reflect a 2008 amendment to *Minnesota Statutes*, section 297A.61, which amended the definition of “telecommunications services,” and added other definitions, including “ancillary services,” “bundled transaction,” and “ring tone”; and is modified to reflect the latest version of the federal *Internet Tax Freedom Act*.

This revenue notice sets forth the department’s position on the following: (1) examples of services that are included under the term “telecommunications services”; (2) inclusion of charges for telecommunications services and charges for ancillary services associated with telecommunications services in the sales price; (3) when exemptions apply for charges to consumers for access to the Internet and for charges to Internet service providers for telecommunications services; (4) charges to guests by lodging establishments for access to a telephone service; (5) bundling of charges where one or more of the products is a telecommunications service, ancillary service, Internet access, or audio or video programming service; and (6) exemptions for certain equipment used by a telecommunications, cable television, or direct satellite service provider.

Statutory Authority

The sale and purchase of telecommunications services, ancillary services associated with telecommunications services, cable television services, direct satellite services, and ring tones are taxable under *Minnesota Statutes*, section 297A.61, subdivision 3(i). The definitions of these terms are found in *Minnesota Statutes*, section 297A.61.

“Telecommunications services,” defined at *Minnesota Statutes*, section 297A.61, subdivision 24, specifically includes air-to-ground radiotelephone service, mobile telecommunications service, postpaid calling service, prepaid calling service, prepaid wireless calling service, and private communication services. Each of these services is defined under *Minnesota Statutes*, section 297A.669.

The *Internet Tax Freedom Act*, 47 U.S.C. 151, provides an exemption from the sales and use tax on charges for telephone line access purchased by consumers solely to acquire access to the Internet.

Minnesota Statutes, section 297A.61, subdivision 38, defines a “bundled transaction,” and *Minnesota Statutes*, section 297A.61, subdivision 4(m), provides that a sale of a bundled transaction is a retail sale, except that “if one of the products is a telecommunication service, ancillary service, Internet access, or audio or video programming service, and the seller has maintained books and records identifying through reasonable and verifiable standards the portions of the price that are attributable to the distinct and separately identifiable products, then the products are not considered part of a bundled transaction.”

Telecommunications Services

Besides telephone and cable services, other ~~The following~~ are examples of services that are also included under the term “telecommunications services”: include, but are not limited to, facsimile (fax), teleconference, telegraph, teletype, Voice over Internet Protocol, and a digital subscriber line (dsl); direct satellite and music services, and automated or partially automated answering services. Telecommunications services include telecommunications services these provided by means of

coin-operated telephones or similar devices. ~~Information and online computer services such as electronic publishing, web hosting, end-user 900 number services, electronic mail services, and electronic bulletin board services are services that are not taxed as telecommunications services.~~

Sales Price

All charges for telecommunications services and for ancillary services associated with telecommunications services, ~~including optional and associated services,~~ must be included in the sales price when determining the amount subject to sales tax, except for separately stated charges for 911 emergency system, telephone assistance plan (TAP), telecommunications access for communications impaired persons (TACIP), and federal excise tax imposed directly on the consumer.

Internet

~~Telephone lines that are purchased by consumers to acquire access to the internet are telecommunications services and are not internet access charges that Minnesota is precluded from taxing under Public Law No. 107-17, Internet Tax Non-Discrimination Act.~~

If a consumer purchases telephone line access for any telecommunications purpose other than to acquire access to the Internet, the telephone line access charges are not Internet access charges that Minnesota is precluded from taxing under the Internet Tax Freedom Act ("ITFA"). If the provider charges the consumer for access to one telephone line, and that line will be used for both telecommunications services and to acquire access to the Internet, the following applies: (1) if the provider separately states the access charges for each on the invoice or billing statement, Minnesota is precluded from taxing access to the Internet under the ITFA; but (2) if the provider aggregates the access charges for each on the invoice or billing statement, the entire access charge is subject to sales and use tax. However, see the "Bundled Services" portion of this revenue notice for an exception regarding aggregated charges when the Internet service provider maintains certain books and records.

The charges for telecommunications services that are purchased by an Internet service provider to provide Internet service to its subscribers are exempt from the sales and use tax. Telephone lines that are used by an internet service provider to provide internet service to their subscribers cannot be purchased exempt for the purpose of resale.

Hotel/Motel Telephone Charges

Charges by hotels and other lodging establishments to guests for access to telephone service are telecommunications services that are subject to tax under *Minnesota Statutes*, section 297A.61, subdivision 24(b). Charges to a hotel or motel guest, for the actual cost of telephone services, rather than for access to those services, are not taxable if the charges are separately stated on the guest's bill.

Many hotels use "call accounting systems" to track and determine the amount to charge guests for long distance telephone calls. Using these systems, the hotel does not know how much the actual telephone service costs until receiving the bill from the telephone company the following month. In this situation, the hotel must charge sales tax on the total amount billed to the hotel guests for the long distance telephone service. The hotel must also continue to pay sales tax on purchases of telephone service from the telephone company. However, the hotel may take a deduction from gross sales reported on their sales and use tax return for the amount billed to the hotel by the telephone company for the actual cost of long distance calls made by hotel guests. This practice is only allowed when the hotel can distinguish between telephone calls billed to guests and the hotel's own administrative costs for telephone service.

Bundled Services

Even though a seller has books and records which identify each portion of the price that is attributable to a distinct and separately identifiable product, such that the products are not considered part of a bundled transaction under *Minnesota Statutes*, section 297A.61, subdivision 4(m), each portion of the price that is attributable to a taxable product is subject to sales and use tax.

Under *ITFA*, when an Internet access charge is aggregated and not separately stated from telecommunications services charges in a consumer bill or invoice, the Internet access charge is not subject to taxation if the Internet service provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

If an Internet access charge is aggregated with charges for telecommunications services, as well as other charges, and the Internet access charge can be identified from books and records, but some or all other charges cannot be identified from books and records, then the aggregated transaction would be a bundled transaction, as provided in *Minnesota Statutes*, section 297A.61, subdivision 4(m). If the aggregated transaction is a bundled transaction, then the total price of the bundled transaction, minus the portion of the price that is attributable to the Internet access charge, is the sales price subject to sales and use tax.

~~When nontaxable elements of a charge for telecommunications services are bundled with taxable elements in one sales price then the entire amount of the sales price is subject to tax. However see Revenue Notice # 02-09: Sales and Use Tax – Internet Access Charges, for the department’s position on the application of the sales and use tax when internet access charges are included in a bundled charge.~~

Telecommunications, Cable Television, and Direct Satellite Equipment

Minnesota Statutes, section 297A.68, subdivision 35, provides an exemption for telecommunications, cable television, and direct satellite machinery and equipment purchased or leased for use directly by a telecommunications, cable television, or direct satellite service provider primarily in the provision of telecommunications, cable television, or direct satellite services that are ultimately to be sold at retail.

- ~~Cable television and telephone service providers, and direct satellite distributors~~
Telecommunications, cable television, and direct satellite service providers generally qualify for the exemption if they sell their telecommunications services at retail.
- Radio and television stations, and others that provide free telecommunications, cable television, or direct satellite services do not qualify for this exemption because they are not selling their telecommunications services at retail.
- Hotels, motels, and other establishments that do not primarily provide telecommunications, cable television, or direct satellite services do not qualify for the exemption.
- The exemption generally does not apply to the purchase of machinery and equipment by an Internet service provider, but this equipment may qualify for the capital equipment exemption for online data retrieval provided for in *Minnesota Statutes*, section 297A.68, subdivision 5. See Revenue Notice # 02-14: Sales and Use Tax – Exemption for Purchases of Telecommunications Equipment – Internet Service Providers.

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