

Minnesota Department of Revenue

Revenue Notice #26-03: Sales & Use Tax – Telecommunications Services – Revocation and Replacement of Revenue Notice #03-10.

This revenue notice replaces Revenue Notice #03-10, which is hereby revoked.

Introduction:

This revenue notice sets forth the department's position on the following:

- (1) examples of services included under the term “telecommunications services;”
- (2) including in the sales price charges for telecommunications services and charges for ancillary services associated with telecommunications services;
- (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 or pay television service provider.

Statutory Authority:

The sale and purchase of telecommunications services, ancillary services associated with telecommunications services, and pay television services are taxable under *Minnesota Statutes*, section 297A.61, subdivision 3(i). The definitions of these service categories are found in *Minnesota Statutes*, section 297A.61.

Minnesota Statutes, section 297A.61, subdivision 24 defines “telecommunications services.” Pursuant to *Minnesota Statutes*, section 297A.61, subdivision 3(i), “telecommunications services” specifically includes air-to-ground radiotelephone service, mobile telecommunications services, postpaid calling service, prepaid calling service, prepaid wireless calling service, and private communications services. Each of these services is defined under *Minnesota Statutes*, section 297A.669.

The *Internet Tax Freedom Act (ITFA)*, 47 U.S.C. section 151 note, prohibits charging sales tax on costs for telephone line access purchased by consumers solely to acquire access to the Internet. The *ITFA* became permanent on February 24, 2016.

Minnesota Statutes, section 297A.61, subdivision 38, defines a “bundled transaction.” *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:

The following are services that are included under the term "telecommunications services:" facsimile (fax), telegraph, teletype, Voice over Internet Protocol (VoIP), a digital subscriber line (dsl), and telecommunications services provided by means of coin-operated telephones or similar devices.

Sales Price:

All charges for telecommunications services, and for ancillary services associated with telecommunications services, must be included in the sales price.

Sales price does not include separately stated charges for:

- (1) the 911 emergency system;
- (2) telecommunications access Minnesota fees (TAM);
- (3) 988 fees;
- (4) telephone assistance plan (TAP);
- (5) telecommunications access for communications impaired persons (TACIP); and
- (6) federal excise tax imposed directly on the consumer.

Internet:

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 *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*;
- (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" section below for an exception regarding aggregated charges when the Internet service provider maintains certain books and records.

The charges for telecommunications services purchased by an Internet service provider to provide Internet service to subscribers are exempt from sales and use tax.

Hotel/Motel Telephone Charges:

Charges by hotels and other lodging establishments to guests for access to telephone services are subject to sales tax as part of the sale and purchase of lodging services under *Minnesota Statutes*, section 297A.61, subdivision 3(g)(2).

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.

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 the *ITFA*, when an Internet access charge is aggregated and not separately stated from telecommunications services charges in a consumer invoice or billing statement, 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 is the only charge that can 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.

Telecommunications and Pay Television Services Equipment:

Minnesota Statutes, section 297A.68, subdivision 35a, provides an exemption for telecommunications and pay television services machinery and equipment purchased or leased

for use directly by a telecommunications or pay television provider primarily in the provision of telecommunications or pay television services that are ultimately to be sold at retail.

- Telecommunications and pay television providers generally qualify for the exemption if they sell their services at retail.
- Radio and television stations, and others that provide free telecommunications or pay television services, do not qualify for this exemption because they are not selling their services at retail.
- Hotels, motels, and other establishments that do not primarily provide telecommunications or pay television 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, paragraph (a).

Revocation of Previous Notice:

This revenue notice revokes and replaces Revenue Notice #03-10.

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