

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #96-13**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

The application of the sales and use tax to certain charges for access to the Internet.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

## **FACTS**

[THE TAXPAYER] is a provider of a service that allows access to the Internet. In order to use this service, subscribers must have access to a personal computer, or terminal, with a modem. Most subscribers access [THE TAXPAYER]'s service by dialing a local telephone number, but service may also be accessed by dialing a long-distance telephone number or by using a dedicated line. In all cases, this initial connection is provided by the subscriber's telecommunications provider and paid for by the subscriber to the telecommunications provider. Once this initial connection is made, [THE TAXPAYER] uses telecommunication services purchased from a long distance carrier, such as Sprint, to connect the subscriber to [THE TAXPAYER]'s server hardware in [CITY], Tennessee which then connects the subscriber to the Internet. All telecommunications subsequent to the initial connection are provided by [THE TAXPAYER] to the subscriber as part of the service purchased by the subscriber from [THE TAXPAYER]. As explained above, [THE TAXPAYER] purchases long-distance service as necessary from a long-distance provider in order to provide this service to its subscribers.

[THE TAXPAYER] charges its subscribers a flat monthly fee for access to the Internet. Any time usage over a base amount allowed in the package purchased by the subscriber is billed on a per hour basis. The monthly invoices that subscribers receive separately state the monthly fee and the excess usage charge.

The subscriber is also charged a one-time sign-up fee. This sign-up fee primarily pays for the service required in the network operations center to initiate the account, but a software disk is also sent to the subscriber. The software disk costs less than \$1.00.

## **QUESTIONS**

1. Whether the monthly access fee is subject to sales tax.
2. Whether the excess usage charge is subject to sales tax.
3. Whether the sign-up fee is subject to sales tax.
4. Whether amounts charged to subscribers located outside Tennessee are subject to sales tax.

## **RULINGS**

1. The monthly access fee is subject to sales tax if the service is originated or received in Tennessee and billed or charged to a service address in Tennessee.
2. The excess usage charge is subject to sales tax if the service is originated or received in Tennessee and billed or charged to a service address in Tennessee.

3. The sign-up fee is subject to sales tax if the service is originated or received in Tennessee and billed or charged to a service address in Tennessee.

4. Charges made to customers located outside Tennessee are not subject to sales tax if the service is billed or charged to a service address outside Tennessee.

### ANALYSIS

T.C.A. Section 67-6-102(23)(F)(iii) defines as a taxable retail sale the following services:

The furnishing, for a consideration, of either intrastate or interstate telecommunication services. Only those charges for interstate telecommunication which are originated or received in this state and which are billed or charged to a service address in Tennessee shall be included in the tax base.

The threshold inquiry is whether [THE TAXPAYER] provides a telecommunication service. Telecommunication is defined broadly to mean “communication by electric or electronic transmission of impulses”, T.C.A. Section 67-6-102(29)(A), and to include “transmission by or through any media such as wires, cables, microwaves, radio waves, light waves, or any combination of those or similar media.” T.C.A. Section 67-6-102(29)(B). T.C.A. Section 67-6-102(29)(D) lists several specific services which are not included within the definition for telecommunications; however, these excluded services are unrelated to the service provided by [THE TAXPAYER].

[THE TAXPAYER] clearly provides a telecommunication service. The service [THE TAXPAYER] provides involves the transmission of electronic messages across telephone lines. This falls squarely within both the statutory definition and the common understanding of telecommunications.

In order for a telecommunication service to be subject to sales tax in Tennessee the service must be billed or charged to a service address in Tennessee. T.C.A. Section 67- 6-102(23)(F)(iii). Service address is defined to mean:

a location of telecommunication equipment from which the telecommunication services are originated or at which telecommunication services are received by the consumers. In the event this may not be a defined location, as in the case of mobile telephones, paging systems, maritime systems, air to ground systems and the like, “service address” means the location of the consumer’s primary use of the telecommunication equipment as defined by the telephone number, authorization codes, or location in Tennessee where bills are sent.

T.C.A. Section 67-6-102(26).

If a telecommunication service is billed to a Tennessee service address, the telecommunication service must also originate or be received in Tennessee in order to be subject to sales tax in this state. T.C.A. Section 67-6-102(23)(F)(iii). The service [THE TAXPAYER] provides its subscriber will be considered to be originated or received at the point at which a subscriber accesses such service. If a subscriber located in Tennessee accesses such service by dialing a local telephone number then [THE TAXPAYER]'s service will be considered to be originated or received in Tennessee. If the subscriber accesses such service by dialing a long-distance number within Tennessee or by dialing [THE TAXPAYER] without toll, such as by use of an 800 number, [THE TAXPAYER]'s service will also be considered to be originated or received in Tennessee. If the subscriber accesses [THE TAXPAYER]'s service by dialing an out-of-state long distance number at his own expense, or similarly uses a long distance private line or similar telecommunication to connect to [THE TAXPAYER] outside Tennessee at the subscriber's own expense, then in those instances [THE TAXPAYER]'s service will not be considered to be originated or received in Tennessee. Those telecommunications services originated or received in Tennessee as described above and billed to a Tennessee service address would be subject to sales tax.

Internet access services which are charged to a Tennessee service address may also be subject to sales tax in Tennessee if the server hardware, which is located in Tennessee, is deemed to be a point at which the service is originated or received. Some or all of the communications involved (for example, electronic mail communications which are stored at the server hardware) originate or are received at the server hardware site located in Tennessee. This would provide an additional basis for taxing service which is billed to a Tennessee service address. It is worth noting that the location of the server hardware only becomes relevant if the service is provided to the customer outside Tennessee but is billed to a Tennessee service address, a situation not presented in the facts provided.

Taxable telecommunication services are subject to tax on the sales price. The term "sales price" is defined by T.C.A. Section 67-6-102(25) to mean "the total amount for which a taxable service or tangible personal property is sold." Applied to the facts presented, monthly access fees, excess usage charges, and the sign-up fee are all part of the sales price subject to tax in instances where the service is indeed taxable.

Charges made to subscribers located outside Tennessee are not subject to sales tax in this state because only telecommunication services which are billed or charged to a service address in Tennessee are subject to sales tax in this state.

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APPROVED: Ruth E. Johnson

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