

DEPARTMENT OF STATE REVENUE

Information Bulletin #51T
Sales Tax
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SUBJECT: Telecommunication and Internet Services

REFERENCES: [IC 6-2.5-1-20.3](#); [IC 6-2.5-1-27.2](#); [IC 6-2.5-1-27.5](#); [IC 6-2.5-4-6](#); [IC 6-2.5-4-13](#); [IC 6-2.5-5-13](#); [IC 6-2.5-12](#); [IC 6-8.1-15](#); [IC 6-10-1](#) Streamlined Sales and Use Tax Agreement)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUMMARY OF CHANGES

Apart from technical, nonsubstantive changes, this bulletin has been revised to provide guidance concerning the taxation of mobile services and the discussion of the prohibition of imposing taxes on internet access.

I. INTRODUCTION

Generally, transactions involving services are not taxable retail transactions. However, Indiana imposes sales tax on a wide range of intrastate telecommunication services. Indiana imposes sales tax on mobile telecommunication services when the customer's place of primary use is Indiana. Indiana is restricted from taxing internet access services. The purpose of this bulletin is to provide guidance on these and other issues.

II. INTRASTATE TELECOMMUNICATION SERVICES

A person is a retail merchant making a retail transaction when the person provides intrastate telecommunication service. Telecommunication service means electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point or between or among points. The term includes a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing regardless of whether the service is referred to as Voice Over Internet Protocol (VOIP) services or is classified by the Federal Communications Commission as enhanced or value added.

Telecommunication services do not include:

- Internet access service (for a discussion on the prohibition of taxing internet access, see the last section of this bulletin).
- Ancillary services.
- Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information.
- Installation or maintenance of wiring or equipment on a customer's premises.
- Tangible personal property.
- Advertising, including but not limited to directory advertising.
- Billing and collection services provided to third parties.
- Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of the services by the programming service provider. Radio and television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3. The taxability of cable and satellite television and radio services is discussed in Sales Tax Information Bulletin #17, available online at in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/.
- Digital products delivered electronically, including the following:
 - Software
 - Music

- Video
- Reading materials
- Ring tones

The taxability of digital products is discussed in Sales Tax Information Bulletin #93, available online at the link above.

It is not required that a public utility be the person furnishing such service in order for the service to be subject to sales tax. If charges for intrastate telecommunication services, ancillary services, Internet access, audio services, or video services that are not taxable are aggregated with and not separately stated from charges that are taxable, the charges for the nontaxable services are exempt from the sales tax only if the provider can reasonably identify the charges not subject to the sales tax from the service provider's books and records kept in the regular course of business.

Example #1: Company A provides cellular phone service. Company A is not a public utility. Company A is required to collect and remit sales tax on its cellular service. The statute imposes sales tax on the transmission of messages or information by microwave, radio, satellite, or similar facilities. Cellular communications are covered by the statute, and the statute does not require that a person be a public utility.

III. VALUE-ADDED NONVOICE DATA SERVICES

Value-added nonvoice data services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for purposes other than transmission, conveyance, or routing are not telecommunication services and are therefore not subject to sales tax. The definition of telecommunication services does not include ancillary services, which are defined to mean "services that are associated with or incidental to the provision of telecommunication services," including detailed telecommunications billing, directory assistance, vertical services, and voice mail services. A vertical service is defined under the Streamlined Sales and Use Tax Agreement, of which Indiana is a signatory, to mean "an 'ancillary service' that is offered in connection with one or more 'telecommunication services,' which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including 'conference bridging services.'"

Example #2: Company B is a local telephone service provider. Company B provides several additional services and service enhancements to its customers. These include call waiting, caller ID, call forwarding, distinct ringing, and voice mail. Company B's local phone service is subject to sales tax. However, the additional services are not subject to sales tax if separately stated on the customer's monthly bill. Custom calling service "enhancements," such as call waiting, caller ID, call forwarding, distinct ringing, and voicemail services are properly included in the definition of vertical services. As such, they qualify under the Streamlined Sales and Use Tax Agreement as ancillary services. Accordingly, they qualify for the exclusion from Indiana sales tax for ancillary telecommunication services. If charges for such ancillary services are aggregated with and not separately stated from charges that are taxable, the charges for the nontaxable services are exempt from the sales tax only if the provider can reasonably identify the charges not subject to the sales tax from the service provider's books and records kept in the regular course of business.

Example #3: Company C is a local convenience store that offers to fax customers' documents for a fee. This charge is not subject to sales tax. Company C is not providing telecommunication services; rather, Company C is providing a service whereby it digitizes a document and sends it to its intended destination using a telecommunication service. Company C is the end user of the telecommunication service and must pay sales tax on any intrastate transmissions.

IV. PUBLIC UTILITIES

The sale of telecommunication services to public utilities, power subsidiaries of a public utility, or any provider of telecommunication services is not subject to sales or use tax.

Example #4: Company D provides local telephone service to Company W. Company W is a public utility providing water service to the community. The sale of local telephone service to Company W is not subject to sales tax because Company W is a public utility.

Example #5: Company E provides cellular phone service to Company D. Company D provides local telephone service to Company E. Neither transaction is subject to sales tax because each is selling a telecommunication service to another provider of a telecommunication service.

Example #6: Company B is a local telephone service provider. Company B offers voice mail service to its customers. This service is not taxable (refer to *Example #2*). However, the fact that the voice mail service is not subject to tax does not exempt the use of telecommunication service in furtherance of that service. In this case, Company B is a telecommunication service provider and therefore its purchase or use of telecommunication service is exempt even when used in furtherance of a non-taxable service. If Company B was not a telecommunication service provider or a public utility, it would be required to pay sales or use tax on its purchase of telecommunication service in furtherance of its voice mail service.

V. TANGIBLE PERSONAL PROPERTY

A telecommunication service provider is not making a retail transaction subject to sales or use tax when it provides changes to, installs, connects, services, or removes tangible personal property used in connection with the furnishing of the telecommunication service.

VI. MISCELLANEOUS CHARGES

"Telecommunications nonrecurring charges" are amounts billed for the installation, connection, change, or initiation of a telecommunications service received by a customer. They are not included in gross retail income. As such, when separately stated, these charges are not subject to sales tax. Additionally, separately stated charges for installing or servicing tangible personal property related to telecommunication service are not subject to sales tax.

Example #7: Company B is a local telephone service provider. As part of an itemized invoice, Company B charges customers for initial hook-up and an additional charge if any labor is needed to physically connect the customer. The hook-up charge is not subject to sales tax because it is a telecommunications nonrecurring charge exempt from sales tax. The charge for labor necessary to physically connect the telecommunications service is not taxable because it is not a charge for a telecommunication service.

As part of an itemized invoice, Company B charges customers for changes made to the customers' telecommunications services. The charge is not subject to sales tax because it is a telecommunications nonrecurring charge exempt from sales tax.

Company B also offers a service whereby it will maintain the phone lines within the customer's house for a fixed monthly fee. This charge is not for telecommunication service and is therefore not subject to sales tax.

Any parts used in providing these services are not subject to sales tax if provided by Company B.

VII. PURCHASES BY TELECOMMUNICATION SERVICE PROVIDERS

Transactions involving the acquisition of tangible personal property by telecommunication service providers are exempt from sales tax if the property is classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts adopted and prescribed for the utility by the Indiana Utility Regulatory Commission. Mobile telecommunications switching office equipment and radio or microwave transmitting equipment, including towers and antennae, are also exempt. If the provider is not subject to the control of the Indiana Utility Regulatory Commission, the exemption applies to any property similar to that mentioned above.

Example #8: Company B is a local telephone service provider. Company B is subject to the authority of the Indiana Utility Regulatory Commission. Company B will look to the uniform system of accounts for local telephone companies to determine whether property it leases or purchases is subject to sales or use tax.

VIII. PREPAID CALLING SERVICES

A person is a retail merchant making a retail transaction when the person sells:

- (1) a prepaid calling service or prepaid wireless calling service at retail;
- (2) a prepaid calling service authorization number or prepaid wireless calling service authorization number at retail; or
- (3) the reauthorization of any of the above.

IX. MOBILE TELECOMMUNICATION SERVICES

The Mobile Telecommunications Sourcing Act (4 U.S.C. 116 et seq.) provides that a customer's home service provider will be subject to a state's sales and use tax regardless of where transmissions originate or terminate within the home service provider's licensed service area. Indiana adopted provisions to comply with this Act, which include a standardized method for taxes, charges, and fees levied on mobile telecommunications services. All fees are charged and taxed based on the customer's place of primary use (e.g., their home address). The sourcing of mobile telecommunication services, as well as internet access services, ancillary services, intrastate telecommunication services, is discussed in Sales Tax Information Bulletin #96, available online at in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/.

X. PROHIBITION ON TAXING INTERNET ACCESS

Federal law prohibits states from imposing a tax on internet access (see the Internet Tax Freedom Act of 1998 and subsequent extensions). Further, Indiana law also provides that neither the state nor a political subdivision of the state may impose, assess, collect, or attempt to collect a tax (including sales tax) on internet access or the use of internet access. This is regardless of whether the tax is imposed on a provider of internet access or a buyer of internet access and regardless of the terminology used to describe the tax. However, this does not prohibit the imposition of a tax upon or measured by net income, capital stock, net worth, or property value.

For purposes of this prohibition, "internet access" means a service that enables users to connect to the internet to access content, information, or other services offered over the internet, without regard to whether the service is referred to as telecommunications, communications, transmission, or similar services, and without regard to whether a provider of the service is subject to regulation by the Federal Communications Commission as a common carrier under 47 U.S.C. 201 et seq.

"Internet access" also includes the following:

- (1) The purchase, use, or sale of communications services, including telecommunications services (as defined in [IC 6-2.5-1-27.5](#)), by a provider of a service described in subsection (a), to the extent the communications services are purchased, used, or sold to provide the service described in the paragraph above or to otherwise enable users to access content, information, or other services offered over the internet.
- (2) Services that are incidental to the provision of a service described in subsection (a), when furnished to users as part of such service, including a home page, electronic mail and instant messaging (including voice-capable and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity.
- (3) A home page, electronic mail and instant messaging (including voice-capable and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity that are provided independently or that are not packaged with internet access.

However, the term "internet access" does not include voice, audio, video programming, or other products and services that use internet protocol or any successor protocol and for which there is a charge, regardless of whether the charge is separately stated or aggregated with the charge for services described the paragraphs above.

This prohibition does not apply to equipment or tangible personal property supplied by an internet access provider to their customer in order for the customer to access the internet. Such equipment may be rented by the customer from the provider on a monthly basis, or the provider may require a one-time payment for the equipment. If providers include a separate charge for such equipment on their customer's bill or invoice, the provider must collect sales tax on the equipment charge (unless the customer is exempt from the tax, e.g., sale to a political subdivision of this state). This would allow the provider to purchase the equipment exempt as a sale for resale or rental.

If the service provider does not separate the charge for equipment from the charge for internet access, the charge would be exempt from sales tax. However, the provider would be required to pay sales tax to their vendor on the purchase of the equipment, or, if sales tax had not been paid, remit use tax.

Additionally, in rare circumstances it could be that, in cases where the charge for equipment and charge for internet access is not separated, the true object of the transaction is the equipment. If that is the case, the transaction would be a taxable bundled transaction.

Questions regarding whether a nonitemized charge would be taxable or not should be directed to the Tax Policy division at taxpolicy@dor.in.gov, as well as any other questions concerning the content of this bulletin.

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Commissioner

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