
State of South Carolina
Department of Revenue
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SC REVENUE RULING #06-8

SUBJECT: Communications – Ways or Means for the Transmission of the Voice or Messages and Other Communications (Sales & Use Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: SC Revenue Ruling #04-15 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: Chapter 36 of Title 12 (2000 and Supp. 2003)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2005)
SC Revenue Procedure #05-2

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION:

The purpose of this advisory opinion is to update a comprehensive discussion that was originally provided in SC Revenue Ruling #04-15 concerning the application of the sales and use tax to the wide variety of communication services available to individual consumers and to businesses. The opinion will “summarize” longstanding Department opinion concerning the taxability of various communication services and will attempt to list as many communication services as possible that the Department has held in the past as subject to the tax, whether through formal advisory opinions, audits or informal advice provided to taxpayers.

Communication technology is expanding every day. As such, new and emerging technologies will make available to consumers many new communication services in the future. The Department will review such communication services on a case-by-case basis.

Note: Charges for the ways or means for the transmission of the voice or messages are subject to the sales and use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). Charges by an Internet Service Provider (“ISP”) that allow a customer to access the Internet (“Internet Access”) are charges for the ways and means for the transmission of the voice or messages. However, as discussed below, the Department has not enforced the assessment and collection of the sales and use tax on Internet Access.

In 1998 Congress established a tax moratorium in the Internet Tax Freedom Act. The moratorium was later extended in the Internet Nondiscrimination Act. The moratorium prohibited the taxation of Internet Access, unless the tax was generally imposed and actually enforced prior to October 1, 1998. Although a few taxpayers were paying sales and use tax on Internet Access, the Department reviewed its enforcement of the tax with respect to Internet Access and determined in 1998 that it had not issued an advisory opinion specifically stating that charges for Internet Access were taxable, and did not have an audit policy to enforce the assessment and collection of the tax on Internet Access. Therefore, the Department determined that the collection of the sales and use tax was not grandfathered under the Congressional moratorium and therefore it could not tax Internet Access. Since charges to access or use an individual database, such as a website, did not constitute an access to the Internet, these charges did not come within the moratorium and were subject to the tax. In addition, charges to access or use an individual database, such as a website, were previously held subject to the tax in SC Revenue Ruling #89-14 as a “database access transmission.”

An extension of the moratorium was signed by President Bush on December 3, 2004 and extends the ban on the taxation of Internet Access until November 1, 2007. In addition, the combination of past Department policies and the Congressional moratorium has created the equivalent of a longstanding administrative policy not to impose the sales and use tax on Internet Access. Therefore, the Department will only enforce collection of the sales and use tax after November 1, 2007, on Internet Access if Congress does not extend the moratorium beyond November 1, 2007, and the General Assembly enacts legislation or approves a regulation to impose the sales and use tax upon Internet Access. However, charges by a third party to access or use that third party’s individual website will continue to be subject to the sales and use tax (e.g. monthly charges to access a sports website).

LAW AND DISCUSSION:

Code Section 12-36-910(A) states:

A sales tax, equal to five¹ percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail. (Emphasis added.)

Code Section 12-36-1310(A) reads:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of five² percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State. (Emphasis added.)

Code Section 12-36-60 defines the term "tangible personal property" to mean:

...personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt. ... (Emphasis added).

Therefore, the term tangible personal property includes the sale or use of intangibles, including communications, that are subject to South Carolina sales or use taxes under Chapter 36 of Title 12.

Communications are subject to sales and use taxes under Chapter 36 of Title 12 pursuant to Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3), which impose the tax on the:

gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or

¹ At the time this document was issued, the total state sales and use tax rate was 5%. Beginning June 1, 2007, the total state sales and use tax rate will be 6%. Code Section 12-36-1110, which increases the sales and use tax rate by 1% beginning June 1, 2007, states:

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to Section 12-36-920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to Section 12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons.

² See footnote #1.

means for the transmission of the voice or messages. Gross proceeds from the sale of prepaid wireless calling arrangements subject to tax at retail pursuant to item (5) of this subsection are not subject to tax pursuant to this item. Effective for bills rendered after August 1, 2002, charges for mobile telecommunications services subject to the tax under this item must be sourced in accordance with the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code. The term “charges for mobile telecommunications services” is defined for purposes of this section the same as it is defined in the Mobile Telecommunications Sourcing Act. All other definitions and provisions of the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code are adopted; (Emphasis added.)

Furthermore, Code Section 12-36-910(B)(3) and Code Section 12-36-1301(B)(3) address the taxation of “bundled transactions.” A “bundled transaction” is “a transaction consisting of distinct and identifiable properties or services, which are sold for one nonitemized price but which are treated differently for [sales and use] tax purposes.” Under these provisions, for customer bills that include telecommunications services in a bundled transaction, where the nonitemized price is attributable to properties or services that are taxable and nontaxable, the portion of the price attributable to any nontaxable property or service is subject to tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business for purposes other than sales taxes. The provisions concerning “bundled transactions” are effective for bills rendered on or after January 1, 2004.

The Code does not provide definitions for various terms or phrases found in Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3); therefore, it is necessary to determine their "ordinary and popular meaning." The Department, in interpreting Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) (and their predecessors), has long used the definitions found in the Second College Edition of the American Heritage Dictionary for defining these terms and phrases.

The Second College Edition of the American Heritage Dictionary provides the following definitions:

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|----------------|--|
| "Gross" | - Exclusive of deductions; total |
| "Proceeds" | - The amount of money derived from a commercial or fund-raising venture; yield |
| "Way" | - A manner of doing something |
| "Means" | - A method, course of action, or instrument by which an act can be accomplished or some end achieved. |
| "Transmission" | - The act or process of transmitting; The state of being transmitted; Something transmitted, as a voice or message |

"Transmit" - Electronics: To send (a signal) as by wire or radio

Substituting the definitions in the Second College Edition of the American Heritage Dictionary for terms found in Sections 12-36-910(B)(3) and 12-36-1310(B)(3), the literal meaning becomes - the total amount of money derived, exclusive of deductions, from a commercial venture and accruing or proceeding from charges for the manner, method or instruments for sending a signal of the voice or of messages is subject to the sales and use tax. See SC Revenue Ruling #89-14 and SC Revenue Ruling #04-15.

Furthermore, the definition of tangible personal property, as defined in Code Section 12-36-60, includes services and intangibles "the sale or use of which is subject to tax under [Chapter 36]," such as "communications." The Second College Edition of the American Heritage Dictionary defines "communication," in part, as "[t]he exchange of thoughts, messages or information, as by speech, signals or writing." "Communications" is defined, in part, as, "a means of communicating esp.: a system of sending and receiving messages, such as mail, telephone and television." As with the above definitions, the Department has long used the definition found in the Second College Edition of the American Heritage Dictionary for the term "communications."

Based on the above discussion, it is the Department's position that charges for the ways or means of communication include charges for access to, or use of, a communication system (the manner, method or instruments for sending or receiving a signal of the voice or of messages), whether this charge is based on a fee per a specific time period or per transmission. This is further supported by the definition of the terms "sale" and "purchase," which are defined in Code Section 12-36-100 to include "a license to use or consume."

The Department of Revenue has taxed communication services such as telephone services, paging services, answering services, cable television services, satellite programming services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services), fax transmission services, voice mail messaging services, e-mail services, and database access transmission services (on-line information services), such as legal research services, credit reporting/research services, and charges to access an individual website.

In SC Revenue Ruling #89-14, the Department defined several of these services as follows:

Facsimile:

Process of transmitting exact copies of written, printed and pictorial material over telephone lines (or optical fiber cables). Images are converted by photoelectric cells, which read the amount of light reflected from or transmitted through a document, into electric signals, which are sent through the transmission network. Signals are picked up by a

facsimile receiver, which reproduces the original document by the reverse process.

Database Access Transmission:

Transmission of computer database information and programs by and through a modem and telephone lines, whether automatically transmitted or transmitted as a result of a subscriber accessing a computer. Charges may be based on the amount of time the transmission is utilized.

Electronic Mail:

Messages that are transmitted from computer to computer over telephone lines under the direction of an intermediate service. This service is a "host" computer that receives messages, holds them and sends them to the proper destination. Users need a microcomputer, or any computer, a modem, a printer, a telephone line and an electronic mail service.

Credit Reporting:

Transmission of credit data using electronic means and/or computers, communication networks, CRT's and printers.

Voice Messaging:

Process of recording messages for a particular person or firm into a central computer database and activating the message to that person or firm when the computer is accessed for the messages.

All of these communication services and others currently taxed by the Department of Revenue constitute communication systems that the purchaser pays to access or use. (See Commission Decision #89-77, SC Revenue Ruling #89-14 and SC Revenue Ruling #04-15.)

In addition, charges by services that charge monthly fee for radio programming services or other communication services a person may receive in their automobile or otherwise are "charges for the ways or means for the transmission of the voice or messages" and subject to the tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

The statute provides several exemptions and exclusions for the charges taxed under Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

Code Section 12-36-2120(11) exempts:

- (a) toll charges for the transmission of voice or messages between telephone exchanges;
- (b) charges for telegraph messages;
- (c) carrier access charges and customers access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission; and
- (d) transactions involving automatic teller machines;

Code Section 12-36-60, the definition of “tangible personal property” which by statute includes communications, states in part:

Tangible personal property does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service. (Emphasis added.)

Code Section 12-36-910(C) states:

Notwithstanding any other provisions of this article or Article 13, Chapter 36 of this title, the sales or use tax imposed by those articles does not apply to the gross proceeds accruing or proceeding from charges for or use of data processing. As used in this subsection, “data processing” means the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers. It also means the electronic transfer of or access to that information. Examples of the processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers. (Emphasis added.)

Code Section 12-36-2120(3) exempts from the tax:

- (a) textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for students’ use in the school library of these schools and institutions;
- (b) books, magazines, periodicals, newspapers, and access to on-line information systems sold to publicly supported state, county, or regional libraries;

Items in this category may be in any form, including microfilm, microfiche, and CD ROM; however, transactions subject to tax under

Sections 12-36-910(B)(3) and 12-36-1310(B)(3) do not fall within this exemption; (Emphasis added.)

It should be noted that the above exemptions also provide further support that “database access transmissions” are subject to the tax since the above exemptions for on-line information systems, the transmission of computer database information by a cooperative service, and the electronic transfer of or access to data processing information would not have been necessary if such communication services were not subject to the tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

Finally, with respect to Code Section 12-36-910(B)(3) and Code Section 12-36-1310(B)(3), the General Assembly approved in 2006 the amendment of SC Regulation 117-328. The amendment, which became effective June 23, 2006, deleted the last paragraph of the regulation which concerned outdated “wired music” provided by AM radio stations and FM radio stations (as defined in the regulation)³. Background music is now usually transmitted via satellite and the charges for such transmissions, in the opinion of the Department, are subject to the tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3)) which impose the sales tax and use tax on charges for the ways or means for the transmission of the voice or messages. In addition, this provision of the regulation was, in the opinion of the Department, in conflict with Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

The South Carolina sales and use tax also address two other types of communication services by special imposition. Code Section 12-36-910(B)(5) and Code Section 12-36-1310(B)(5) impose the sales and use tax on the:

gross proceeds accruing or proceeding from the sale or recharge at retail for prepaid wireless calling arrangements.

(a) “Prepaid wireless calling arrangements” means communication services that:

(i) are used exclusively to purchase wireless telecommunications;

(ii) are purchased in advance;

(iii) allow the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically; and

(iv) are sold in units or dollars which decline with use in a known amount.

³ The amendment to SC Regulation 117-328 only applied to “wired music” provided by AM and FM radio stations. The amendment does not affect the longstanding position of the Department that satellite programming services and other programming transmission services (including music) are subject to the tax. See “Taxable Communication Services” as listed in this document and SC Revenue Ruling #04-15.

(b) All charges for prepaid wireless calling arrangements must be sourced to the:

(i) location in this State where the over-the-counter sale took place;

(ii) shipping address if the sale did not take place at the seller's location and an item is shipped; or

(iii) either the billing address or location associated with the mobile telephone number if the sale did not take place at the seller's location and no item is shipped.

Code Section 12-36-2645 imposes the sales and use tax on:

gross proceeds accruing or proceeding from the business of providing 900/976 telephone service except that the applicable rate of the tax is ten⁴ percent.

CONCLUSION:

Taxable Communication Services⁵:

1. Based on the above, it has been the Department's longstanding opinion that charges for the following communication services are subject to the sales and use tax pursuant to Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3):

Telephone services (not specifically exempted under Code Section 12-36-2120(11)), including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol ("VoIP"), or any of other method

Teleconferencing Services

Paging Services (See SC Information Letter #89-28.)

Answering Services (See SC Information Letter #89-28.)

Cable Television Services

Satellite Programming Services and Other Programming Transmission Services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)

⁴ As noted above, Code Section 12-36-1110 increases the state sales and use tax rate by 1% beginning June 1, 2007. Therefore, the total state tax rate on the gross proceeds accruing and proceeding from the business of providing 900/976 telephone service will be 11% beginning June 1, 2007.

⁵ See also SC Revenue Ruling #04-15 for previous summary of communication services subject to the tax.

Fax Transmission Services (See SC Revenue Ruling #89-14.)

Voice Mail Messaging Services (See SC Revenue Ruling #89-14.)

E-Mail Services (See SC Revenue Ruling #89-14.)

Electronic Filing of Tax Returns when the return is electronically filed by a person who did not prepare the tax return (See SC Revenue Ruling #91-20.)

Database Access Transmission Services (On-Line Information Services), such as legal research services, credit reporting/research services, charges to access an individual website⁶ (including Application Service Providers), etc. (not including computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative services) (See SC Revenue Ruling #89-14 and SC Private Letter Ruling #89-21.)

Note: It is the Department's opinion charges for mobile satellite communication services, such as automobile satellite radio programming or other mobile communication services, are sourced to the primary place of use of the customer (e.g., the residence of an individual customer) as defined in the Mobile Telecommunications Sourcing Act.

⁶ Charges for the ways or means for the transmission of the voice or messages are subject to the sales and use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). Charges by an Internet Service Provider ("ISP") that allow a customer to access the Internet ("Internet Access") are charges for the ways and means for the transmission of the voice or messages. However, as discussed below, the Department has not enforced the assessment and collection of the sales and use tax on Internet Access.

In 1998 Congress established a tax moratorium in the Internet Tax Freedom Act. The moratorium was later extended in the Internet Nondiscrimination Act. The moratorium prohibited the taxation of Internet Access, unless the tax was generally imposed and actually enforced prior to October 1, 1998. Although a few taxpayers were paying sales and use tax on Internet Access, the Department reviewed its enforcement of the tax with respect to Internet Access and determined in 1998 that it had not issued an advisory opinion specifically stating that charges for Internet Access were taxable, and did not have an audit policy to enforce the assessment and collection of the tax on Internet Access. Therefore, the Department determined that the collection of the sales and use tax was not grandfathered under the Congressional moratorium and therefore it could not tax Internet Access. Since charges to access or use an individual database, such as a website, did not constitute an access to the Internet, these charges did not come within the moratorium and were subject to the tax. In addition, charges to access or use an individual database, such as a website, were previously held subject to the tax in SC Revenue Ruling #89-14 as a "database access transmission."

An extension of the moratorium was signed by President Bush on December 3, 2004 and extends the ban on the taxation of Internet Access until November 1, 2007. In addition, the combination of past Department policies and the Congressional moratorium has created the equivalent of a longstanding administrative policy not to impose the sales and use tax on Internet Access. Therefore, the Department will only enforce collection of the sales and use tax after November 1, 2007, on Internet Access if Congress does not extend the moratorium beyond November 1, 2007, and the General Assembly enacts legislation or approves a regulation to impose the sales and use tax upon Internet Access. However, charges by a third party to access or use that third party's individual website will continue to be subject to the sales and use tax (e.g. monthly charges to access a sports website).

(Pursuant to Code Section 12-36-910(B)(3) and 12-36-1310(B)(3), “charges for mobile telecommunications services ... must be sourced in accordance with the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code.)

2. Based on the above, it has been the Department’s longstanding opinion that charges for the following communication services are subject to the sales and use tax pursuant to Code Section 12-36-910(B)(5) or Code Section 12-36-2645:

Prepaid Wireless Calling Arrangements (sale or recharge at retail) as defined in Code Section 12-36-910(B)(5) (For information on prepaid telephone calling cards that do not come within the definition of prepaid wireless calling arrangements, see SC Revenue Ruling #04-4.)

900/976 Telephone Service (The State tax rate on this type of communication service is 10% (11% beginning June 1, 2007), not 5% (or 6% beginning June 1, 2007).)

Non-Taxable Communication Services⁷:

Based on the above, it has been the Department’s longstanding opinion that charges for the following communication services are **not** subject to the sales and use tax pursuant to Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3):

Telephone services specifically exempted under Code Section 12-36-2120(11), such as toll charges between telephone exchanges and carrier access charges and customers access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission

Telegraph Messages (Code Section 12-36-2120(11))

Communication Services involving Automatic Teller Machines (Code Section 12-36-2120(11))

Data Processing Services as defined under Code Section 12-36-910(C)

Computer Database Information Services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative services (Code Section 12-36-60)

Electronic Filing of Tax Returns when the return is electronically filed by a person who prepared the tax return (See SC Revenue Ruling #91-20.)

In SC Private Letter Ruling #97-4 and SC Technical Advice Memorandum #95-1 the Department determined that charges for electronically monitoring a customer's home or business for the purpose of burglary and fire protection were not subject to the sales and

⁷ See also SC Revenue Ruling #-4-15 for previous summary of communication services not subject to the tax.

use taxes since such charges were not charges for access to, or use of, a communication system (ways or means for the transmission of the voice or messages). The sale or lease of equipment to the customer, or the use of the equipment by the monitoring company, were held subject to the tax based on the specific facts and circumstances.

“Bundled Transactions:”

Based on the above, it is the Department’s opinion that for a customer bill rendered on or after January 1, 2004 that includes telecommunications services in a bundled transaction, where the nonitemized price is attributable to properties or services that are taxable and nontaxable, the portion of the price attributable to any nontaxable property or service is subject to tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business for purposes other than sales taxes.

Note: A “bundled transaction” is “a transaction consisting of distinct and identifiable properties or services, which are sold for one nonitemized price but which are treated differently for [sales and use] tax purposes.”

Note: This advisory opinion attempts to list as many communication services as possible that the Department has held in the past as subject to the tax, whether through formal advisory opinions, audits or informal advice provided to taxpayers. Charges for other communication services not listed in this advisory opinion are still subject to the tax if they constitute charges for the ways or means for the transmission of the voice or messages and are not otherwise exempted under the law.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

November 16 _____, 2006
Columbia, South Carolina