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Comments Due by: **March 11, 2016**

SC REVENUE RULING #16-xx [DRAFT-2/18/16]

SUBJECT: Streaming of Television Programs, Movies, Music, Etc.
(Sales and Use Tax)

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

MODIFIES: SC Revenue Ruling #06-8

REFERENCES: S.C. Code Ann. Section 12-36-910 (2014)
S.C. Code Ann. Section 12-36-1310 (2014)
S.C. Code Ann. Section 12-36-60 (2014)
S.C. Regulation 117-329 (2012)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

Question:

Are charges paid by a customer for streaming television programs, movies, music, and other similar content subject to South Carolina sales and use tax?

Conclusion:

Charges paid by a customer for streaming television programs, movies, music, and other similar content are charges for a communication service and are therefore subject to South Carolina sales and use tax.

Overview:

Communications technology is rapidly changing and is providing the ability to transmit home entertainment in ways other than traditional cable and satellite television. Through the use of on-demand streaming services, customers are able to connect to content providers to watch unlimited television programs, movies, sporting events, and more. Customers can stream live and on-demand programming via an internet connection. Streaming is available on televisions, smart phones, laptops,

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and other devices. Customers may choose from a variety of streaming content and are usually charged a monthly or annual subscription fee.

The purpose of this ruling is to discuss the taxability of the transmission of home entertainment through streaming of television programs, movies, music, and other similar content.

Law and Discussion:

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

A sales tax, equal to [six]¹ 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.

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 [six]² percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

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), each of which imposes 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 means for the transmission of the voice or messages. ... [Emphasis added.]

The Department has long held that the charges for communication services include charges for access to, or use of, a communications system (the manner, method or instruments for sending or

¹ Code Section 12-36-1110 increased the sales and use tax rate by 1% beginning June 1, 2007.

² See footnote #1.

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receiving a signal of the voice or of messages), whether the charges are based on a fee per a specific time period or per transmission.

Regulation 117-329 provides guidance as to the application of sales and use tax to a wide variety of communication services available to individual consumers or businesses. Regulation 117-329.4 provides examples of communication services and states:

The following are examples of communication services that are subject to the sales and use tax (unless otherwise listed as non-taxable in 117-329.5 or otherwise exempt or excluded under the law):

* * * *

(e) Cable Television Services

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

* * * *

The Department has taxed communication services such as telephone services, paging services, cable television services, satellite programming services (including, 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.³

“Streaming” is not defined in the sales tax law. The *American Heritage Dictionary, Fifth Ed.* (2011), defines the word “stream” in this context to mean “to transmit (audio or video content), especially over the Internet, in small, sequential packets that permit the content to be played continuously, as it is being received and without saving it to a hard disk.”

Based on the discussion above, the transmission of television programs, movies, music, and other similar content by streaming is no different than cable and satellite transmission of television programs, movies, music, and other similar content.

Accordingly, charges paid by a customer for streaming television programs, movies, music, and other similar content are charges for a communication service and are therefore subject to South Carolina sales and use tax.

³ See SC Revenue Ruling #06-8 for examples of communication services subject to tax.