

SC INFORMATION LETTER #04-27

**SUBJECT:** Internet Access/Electronic Commerce Moratorium

**DATE:** December 21 2004

**SUPERSEDES:** SC Revenue Informational Bulletin #02-3,  
SC Information Letters #99-9 and #98-25,  
and all previous documents and any oral directives in conflict herewith.

**REFERENCE:** S. C. Code Ann. Section 12-36-910 (Supp. 2000 and 2003)  
S. C. Code Ann. Section 12-36-1310 (Supp. 2000 and 2003)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. 2000)  
S.C. Code Ann. Section 1-23-10(4) (Supp. 2003)  
SC Revenue Procedure #03-1

**SCOPE:** An Information Letter is a written statement issued to the public by the Department to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value, and is not binding on the public or the Department.

**Internet Access:** 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 imposed the sales and use tax on Internet Access.

In 1998 Congress established a tax moratorium in the Internet Tax Freedom Act. The moratorium has been extended twice under the Internet Nondiscrimination Act. The most recent extension was signed by President Bush on December 3, 2004 and extends the ban on the taxation of Internet Access until November 1, 2007.

The original 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 imposition of the sales and use tax was not grandfathered under the Congressional moratorium, and it could not tax Internet Access. Since charges to access or use an individual database, such as website, did not constitute an access to the Internet, the Department held that 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 website, were previously held subject to the tax in SC Revenue Ruling #89-14 as a “database access transmission.”

With the extension of the moratorium, charges by an ISP that allow a customer Internet Access are not subject to the South Carolina sales and use tax during the moratorium. 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 impose 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).

For general information concerning the application of the sales and use tax to various communication services, see SC Revenue Ruling #04-15.

**Internet Sales:** In the department’s opinion, the South Carolina sales and use tax is not a “multiple tax” or a “discriminatory tax” as defined under the Internet Tax Freedom Act. Therefore, the department will handle the assessment or collection of sales or use tax for sales of tangible personal property via the Internet in the same manner as any other transaction subject to sales or use tax in South Carolina. Therefore, sales or purchases of tangible personal property via the Internet are subject to the South Carolina sales and use tax.