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State of South Carolina  
**Department of Revenue**  
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Website Address: <http://www.sctax.org>

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SC PRIVATE LETTER RULING #03-2

SUBJECT: DSL Internet Access  
(Sales and Use Tax)

REFERENCES: S. C. Code Ann. Section 12-36-910(B)(3) (Supp. 2001)  
S. C. Code Ann. Section 12-36-1310(B)(3) (Supp. 2001)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (Supp. 2001)  
SC Revenue Procedure #03-1

SCOPE: A Private Letter Ruling is a written statement issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. **A Private Letter Ruling is an advisory opinion; it does not have the force and effect of law and is not binding on the person who requested it or the public.** It is, however, the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Question:

Are charges by XYZ, Inc. to its customers for DSL Internet Access Service subject to the sales and use tax imposed by Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) during the period covered by the Internet Tax Freedom Act?

Conclusion:

Charges by XYZ, Inc. to its customers for DSL Internet Access Service (as described in the Facts) are not subject to the sales and use tax imposed by Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) during the period of October 1, 1998 through November 1, 2003.

Facts:

XYZ, Inc. (“XYZ”) offers its customers a DSL-based high-speed Internet access service (hereinafter referred to as “DSL Internet Access”). XYZ is currently selling DSL Internet Access under the brand name “A.” By subscribing to this service and paying a monthly fee, customers receive unlimited Internet access, personal webpage space, e-mail accounts, customized start page, access to newsgroups and Internet tools. The DSL technology allows both normal telephone signals (traditionally used for voice and data transmission) and high-speed signals (used for Internet access and other high-speed applications) to be transmitted over existing copper-wire telephone lines. The use of the same lines to transmit normal and high-speed signals is accomplished by transmitting the normal signal at a lower frequency and transmitting the high-speed signals at a higher frequency. Using the frequency differential, the high-speed channel is separate from the low-speed channel used for normal telephone service. Although the DSL high-speed channel is capable of a variety of uses, customers purchasing XYZ’s DSL Internet Access are able to utilize the DSL channel only for Internet access.

In order to utilize the DSL technology, the signal from a customer’s home computer must be converted to a higher frequency by a DSL modem located at the customer’s premises. This high-speed signal is then transmitted to the appropriate XYZ central office where a piece of equipment called a “splitter” separates the normal and high-speed signals traveling over the line from the customer’s premises. The low frequency signal is directed to the public switched telephone network while the high frequency signal is directed to the packet switch and then to XYZ’s Internet routers.

With DSL Internet Access, the customer is purchasing only Internet access and is not purchasing voice communication services. Charges for DSL Internet Access are separate from those for voice communication services.

Discussion:

Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) impose the sales and use tax upon:

the gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or of 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 of messages....

However, on October 21, 1998, Congress enacted the Internet Tax Freedom Act to provide that no state or political subdivision shall impose from October 1, 1998 to October 21, 2001 any of the following taxes: (1) taxes on Internet access, unless such tax was generally imposed and actually enforced (i.e., collected) prior to October 1, 1998, and (2) multiple or discriminatory taxes on electronic commerce. In November 2001, President Bush signed into law the Internet Nondiscrimination Act to extend this tax moratorium until November 1, 2003.

The term “Internet access” is defined in the Act to mean “a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.”

As a result of this moratorium, the Department announced in SC Revenue Informational Bulletin #02-3 that it will not enforce collection of sales and use taxes during October 1, 1998 to November 1, 2003, with respect to Internet access. (See also SC Information Letters #99-9 and #98-25.)

Based on the above, charges by XYZ Telecommunications, Inc. to its customers for DSL Internet Access Service (as described in the Facts) are not subject to the sales and use tax imposed by Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) during the period of October 1, 1998, through November 1, 2003.

SOUTH CAROLINA DEPARTMENT OF REVENUE

S/Burnet R. Maybank III  
Burnet R. Maybank III, Director

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March 10, 2003  
Columbia, South Carolina